IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No.

CLAYTON MARK & COMPANY, ET AL.,
Petitioners,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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5126 PROCEEDINGS.

Trial Examiner Norwood: Hearing come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is now reconvened in Room 532, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., Eastern War Time, February 12, 1942.

Please note the appearances.

Dr. Fairchild will please resume the stand.

FRED ROGERS FAIRCHILD resumed the stand and testified further as follows:

The Witness: Your Honor, with your permission, I would like to make an addition to one of the answers to a question that I answered yesterday which, on seeing the record, I fear was not complete owing to my misinterpretation of the scope of the question.

Trial Examiner Norwood: Well, you just let that go by until the redirect and counsel for the Respondents will give you opportunity, you see, of answering that.

Mr. MacIntyre: Do you have your record for the 10th, Your Honor?

Trial Examiner Norwood: No. I think I have it at the office. I haven't it here.

Mr. MacIntyre: Well, I will show you mine for a moment.

5127 You will note that there was a statement made by the witness beginning on line 13 running through line 19 on page 4934, in which he used such words as "probably," "could," "presumably," and "doubtless" in attempting to say what someone would or would not do. I moved to strike that statement because it was not a statement of economic theory or any economic principle, and the witness was attempting to draw up on some speculation of facts in giving that answer. The motion also included the answer which is—a continuation of that statement which is included between lines 14 and 20 on page 4935. Your ruling was to defer final ruling on the motion until you could see it; that is, see the testimony.

I now hand you my record with that testimony and ask you to consider your final ruling on it.

Trial Examiner Norwood: Well, I am inclined to think that that is a statement of economic probabilities there.

Mr. MacIntyre: It couldn't be unless the assumed probabilities were facts, and no one has assumed those except the witness. There is no foundation for such an assumption.

Trial Examiner Norwood: I think it is a theory of economic tendencies in stated circumstances there.

Mr. MacIntyre: But he has assumed the stated circumstances, if you please, when he said that these people would doubtless do these things.

5128 Trial Examiner Norwood: That is right.

Mr. MacIntyre: And there is no showing that they have. He presumed that they did, and perhaps they would do one thing if they probably did another; and, of course, there is no factual foundation for the statement.

Trial Examiner Norwood: Well, now, this is an expert witness here and he is answering hypothetical questions right along.

Mr. MacIntyre: Yes, but he can't pose his own hypothetical questions, without any foundation on fact, and then answer his own questions.

Trial Examiner Norwood: He might by way of explanation. You can cross-examine him on it.

I will deny the motion.

Mr. MacIntyre: It must be in accordance with the facts of the record, which they are not.

Cross-Examination (Continued) by Mr. MacIntyre.

Q. Now, Dr. Fairchild, in further reference to the answer which you gave and which appears between lines 7 and 14 on page 5124, your last answer of yesterday—you recall that answer; do you?

A. (After referring to record) Yes.

Q. Now, following that answer, and with reference to it, I will ask you whether or not—or I do ask you

5129 whether or not there is any more relation to supply and demand factors in one of these so-called separate destination markets to the price, base price at Pittsburgh, which is made to control destination price quotations in these so-called separate markets, than there is between the—than there is of one of the ingredients to the other ingredients which are thrown into the hopper and ground up and come out balogna, as the final result?

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Mr. Robison: Well, I object to the question, Mr. Examiner.

Trial Examiner Norwood: Sustained.

Mr. Robison: I don't think we are dealing in metaphors here.

Mr. MacIntyre: I have drawn an analogy here that, I think, is very pertinent. May we have the question read?

Trial Examiner Norwood: The fact that that came out balogna, was that his previous testimony about balogna?

Mr. Robison: No. He said that you would grind all of these things up and you will have something with which you eventuate.

Mr. MacIntyre: I am asking him whether or not the ingredients thrown into the hopper and ground up have any more relation to each other and the result therefrom than one of the ingredients to the other ingredients which is put into the hopper and ground up and comes
5130 out balogna, to balogna.

I ask that the question be read, now, and he give me an answer to the question.

Trial Examiner Norwood: I ask the witness if he can consider the term "balogna" in a serious aspect and answer the question, and if he can he may; otherwise, I will sustain the objection.

The Witness: I have no objection, Your Honor, to the word "balogna," but I confess I don't understand what this question means.

Trial Examiner Norwood: I think the counsel can reframe it.

The Witness: Of course, I didn't myself, use the term "balogna". That is understood.

Mr. MacIntyre: Let us have the question.

Trial Examiner Norwood: Read it.

Mr. MacIntyre: Let us have the question read.

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Austin: Your Honor please, I would like to press an objection to that question on the ground that it makes absolutely no sense.

Trial Examiner Norwood: You mean—

Mr. Austin: I mean grammatically.

Trial Examiner Norwood: There is an assumption
5131 there that might be left out and still leave a clear question.

Mr. Austin: Exactly.

Trial Examiner Norwood: And, I think, a very useful question.

Mr. Austin: Yes, sir; I agree to that, but I don't see that that sentence, as worded, makes sense.

Trial Examiner Norwood: You may direct the question to determining if one of these points bears any more relation to the final price determined on than the other,—

Mr. MacIntyre: No, if Your Honor please.

Trial Examiner Norwood: —one having different degrees of demand from the other.

Mr. MacIntyre: If Your Honor please, on cross-examination in this way I think I should be entitled to use an analogy which is more common to more people than—

Trial Examiner Norwood: No. I think the question is confusing and I think that the witness has a right to prefer that it be clarified.

I will sustain the objection.

By Mr. MacIntyre:

Q. Is there any more relation, Dr. Fetter—Dr. Fairchild—

A. Thank you. I am honored.

Q. —this result—to this result which comes out of the hopper ground up and to which you made reference 5132 in your answer on page 5124 of the record, to the—is any one of the ingredients there thrown into the hopper, than there is to the finished result which is poured out of a balogna hopper or a concrete mixing hopper to the results thrown into those hoppers and ground up or mixed up for the results obtained?

Mr. Stewart: Now, I object on the ground that that is pursuing a double metaphor and serves no purpose at all.

Trial Examiner Norwood: Read it over again.

(Question read.)

Mr. Austin: I would like to press an objection to that question on the ground that it is a hopped-up question. It makes absolutely no sense.

Trial Examiner Norwood: I overruled the previous objection on the ground that the question was confusing and too much involved and this question is more so, I think, than the other.

Mr. MacIntyre: Well, I asked before the Reporter

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read it that I be permitted to amend it, and counsel seemed to want to object to an amendment to my question. I can't understand why.

Trial Examiner Norwood: Go ahead and amend it.

Mr. MacIntyre: I want the Reporter to amend the question to read this way, and I ask him to go back and insert the words in the question this way:—

Trial Examiner Norwood: I think it is simpler
5133 for me to sustain the objection and the counsel to ask another question.

And, off the record—

(Discussion off the record.)

(Question read, as amended, as follows:

"Q. Is there any more relation, Dr. Fairchild, to this result which comes out of the hopper ground up, and to which you made reference in your answer on page 5124 of the record, to any one of the ingredients put into the hopper than there is to the finished result which is poured out of a balogna hopper or a concrete-mixing hopper to the ingredients thrown into those hoppers and ground up or mixed up for the results obtained?")

Mr. MacIntyre: That is it.

Mr. Austin: If Your Honor please, I still think that is a confusing question, and I would like to suggest—

Trial Examiner Norwood: The ruling stands. I just permitted him to make the correction.

Have you got the amended question, Mr. Reporter?

The Reporter: Yes.

Trial Examiner Norwood: Proceed. The question is ruled out.

Mr. MacIntyre: That was the intent of the question, and if the record shows what the question was, I
5134 am satisfied with it.

Trial Examiner Norwood: I think you can simplify it. You can ask some other question so that it may be more easily understood.

By Mr. MacIntyre:

Q. Now, in lines 13 and 14 of page 5124, Doctor, you stated that—you were speaking of the conduit manufacturer in the making of prices and considering different information in the making up of a price—"But when he gets his data, he then puts all the data in the hopper, so to speak, and grinds out his result."

Who were you talking about there, "he"?

A. The manufacturer.

Q. Well, did you necessarily by the use of the word "he" confine that to the manufacturer located at Pittsburgh with a mill there?

A. I think that the questions you asked me before that were related to base prices in Pittsburgh and the prices in two other points. So, while that is a general statement, it might apply to various manufacturers and sellers. I presume that the intent was to answer it with respect to the question you asked relating to the manufacturer in Pittsburgh.

Q. The manufacturer which used the Pittsburgh base price in calculating prices that way; is that the way you intended to answer?

5135 A. Yes. Your question was about determining the price quotations in two towns based on Pittsburgh, and I answered it with respect to the same manufacturers that I presume you had in mind.

Q. That is, anyone that used the Pittsburgh base price in so calculating his prices for Philadelphia and Washington; is that correct?

A. Yes.

Q. And that would be true irrespective of whether he made shipments of conduit from Pittsburgh or from some other location?

A. He might be using the Pittsburgh base in his determination of price quotations, although his mill were located elsewhere than Pittsburgh.

Q. Your answer would apply just as much to one as to the other; is that correct?

A. In answering that I was, I am sure, thinking of the manufacturer in Pittsburgh.

If I can see the answer again I can probably tell you whether it would be true of any other manufacturer.

Q. Well, let us see whether your answer would be the same.

Assume that a rigid steel conduit manufacturer has a plant, a manufacturing plant, producing rigid steel conduit in the vicinity of Philadelphia, within 15 miles, selling it and shipping it into Philadelphia and selling it

5136 and shipping it at the same time into Washington, D. C. At that same point of time the demand is declining in Philadelphia and is increasing in Washington,

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D. C. This man, however, does not sell all of his conduit in the declining market in Philadelphia; some of it is shipped from as far away as Pittsburgh to some customers in Philadelphia. But this man with the mill located in the vicinity of Philadelphia announces a price and makes his sales calculated from the price he announced which is a Pittsburgh base price, from which he calculates delivered price quotations by adding the freight thereto from Pittsburgh to Washington and to Philadelphia, for both of those points.

Do you say that your answer which appears between lines 7 and 14 on page 5124 applies to his action?

A. Well, you see, you now ask me quite a different question. Your previous question related to the—

Q. No. I am asking you now—without going back into previous questions, answer the pending question, Doctor.

A. Well, you asked me how this answer applies to the others.

Q. I am asking you if it does.

Trial Examiner Norwood: Does it apply or does it not apply?

The Witness: It does not apply without some qualification.

By Mr. MacIntyre:

5137 Q. Now, what qualifications do you want to make to have that answer apply to the situation I have just put to you?

A. This answer was made to a question—

Q. I am asking you now how you will qualify it to have it apply to the proposition I have placed before you.

Mr. Robison: I think that the answer that the witness started to make is perfectly proper.

Trial Examination Norwood: Go ahead.

A. This answer was made to a question, and a series of questions, preceding, which asked me about the process by which a manufacturer in Pittsburgh determines the Pittsburgh base price. Definitely—

Mr. MacIntyre: Now, I move to strike that. The Doctor is incorrect.

Trial Examiner Norwood: Let him complete his answer. You asked him why it did not apply.

A. (Continuing.) The question definitely assumes that this manufacturer determined the base price in Pitts-

burgh of $5 and that he added to it freight rates to two other points and so arrived at the delivered price.

Now, as I understand, I have been asked about the price policies and actions of another manufacturer, not in Pittsburgh, who is quoting prices in these same two towns, but based on the Pittsburgh base.

Now, my answer says that he does not disregard
5138 the separateness of these two markets. That is still true. He regards these two places as separate markets.

"He has to get separate reports of demand conditions in both." That is also true.

"He can't disregard their separation." I think I said their separateness, not separation.

"Otherwise we lose the hypothesis here, which is that one demand is going up and one demand is going down. Those are separate features of two separate markets. But when he gets his data, he then puts all the data into the hopper, so to speak, and grinds out his result."

With the understanding that this answer now applies to a manufacturer who is not at Pittsburgh, the answer would still hold true.

By Mr. MacIntyre:

Q. Just the same as it would for the man in Pittsburgh?

A. Yes. I have said nothing here that does not apply to a manufacturer outside of Pittsburgh.

Q. In other words, you do not want to qualify that answer in order to have it apply to the hypothesis I have just given you?

A. No, except as I already have.

Q. If instead of taking Philadelphia and Washington, D. C., we took any two or more so-called destinations in this Pittsburgh basing territory, and facts applied to
5139 them as they have in my proposition to you to Philadelphia and to Washington, your answer would be the same that you have just given; is that correct?

A. Yes. My answer said that he would take account of data he gathered from all markets, not only these two; wherever the markets are in which he is selling, or contemplates selling, he will wish information and he will take account of that information and determine his price policy.

Q. And in each instance the result in the price quotation would be a reflex of the Pittsburgh base price?

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A. Yes. You have assumed that this manufacturer is quoting prices based on Pittsburgh.

Q. Do you have any opinion as to the size and the location of the Pittsburgh basing territory in the rigid steel conduit manufacturing industry?

A. Only a very, very general, not very definite, opinion.

Q. What is that opinion, Doctor?

A. It is my opinion that the manufacture of rigid conduit is to a considerable extent centered in the Pittsburgh district.

Mr. MacIntyre: Will you please read my last two questions?

(Record read.)

By Mr. MacIntyre:

Q. You evidently misunderstood my question.

5140 I am asking you whether or not that you have any opinion as to the location of the territory and the size of the territory where the Pittsburgh base price plus freight determines the amount of the delivered price quotations.

Mr. Robison: Mr. Examiner—

Q. In the rigid steel conduit manufacturing industry.

Mr. Robison: I object to it on the ground that the subject matter of the question is not a proper subject matter of opinion. I understand the purpose is to ask the witness what he knows about it, not what his opinion is.

Trial Examiner Norwood: I take it he was laying the ground for a question bearing on economic theory.

Mr. Robison: Well, I think—

Trial Examiner Norwood: If he is not, it is outside the range of proper cross-examination.

Mr. MacIntyre: Well, if Your Honor please, I will change the word "opinion" in that question to read "understanding."

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Substitute the word "understanding" for "opinion."

Trial Examiner Norwood: Yes.

Mr. Stewart: May I have the question read now?

Trial Examiner Norwood: Yes. Read it.

(Question read as follows:

5141 "Q. I am asking you whether or not that you have any understanding as to the location of the territory

and the size of the territory where the Pittsburgh base price plus freight determines the amount of the delivered price quotations.")

Trial Examiner Norwood: Can you answer that?

The Witness: I could not answer that with any degree of definiteness. That is a matter of knowledge of fact.

By Mr. MacIntyre:

Q. Well, please tell us what your understanding of that is as you have been able to secure it from the hypothesis that was propounded to you by Mr. Moore in his hypothetical question A and all of the other hypothetical questions that he put to you added to it.

A. Well, what I principally got from the hypothetical statement I already told you, that a considerable part of the manufacture of rigid steel conduit is located at Pittsburgh, and that price is the base on which delivered prices are calculated for a very considerable region. Just how large that region is, or just what its boundaries are, I could not say.

Q. Don't you have any understanding as to what the size or the boundaries of that region is?

A. Not any precise understanding. I am aware that it is a large region.

5142 Q. What is your understanding as to its approximate size and bounds?

A. Beyond saying that it is a large area, I can't answer. It is a matter of fact of which I am not sufficiently informed.

Q. Don't you recall that yesterday I asked you a question about base prices, and you said that you understood that some base prices were made to apply to Pittsburgh itself and others at Evanston or Chicago, Ill.?

A. Oh, yes, I understand that.

Q. Now, I am asking you whether you have any understanding from anything that Mr. Moore has given you in any of his hypotheses as to the size of the territory controlled by any one of these bases about which you have testified.

A. I have answered that to the best of my ability.

Q. And that answer is what, that you do not know?

A. Beyond knowing that these are large areas, I can't tell you even the approximate size of the areas or where the boundary lines are.

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Q. Is it your understanding that those areas are approximately the same in size?

A. I could not do better than make a guess at that.

Q. What is that?

Mr. Stewart: I object to that.

A. I would rather not guess.

5143 Mr. Stewart: If we are going to question the witness about this, we should put a hypothetical question to him.

Trial Examiner Norwood: He can give us his understanding on this particular point which he had at the time he answered the hypothetical question.

Give it as accurately as you can.

The Witness: Yes, Your Honor, I can do that.

Trial Examiner Norwood: I shall overrule the objection. You may answer.

The Witness: I do not recall that the hypothetical question gave the areas of these territories or their boundaries. It did give the fact, which I have already said I knew, that a large part of the industry was located in the Pittsburgh area, and that Pittsburgh and at other times Evanston, Ill., and Chicago were basing points. I am aware of all of that as a matter of assumed facts set before me in the hypothetical questions.

Trial Examiner Norwood: Yes.

The Witness: Now, beyond that, my factual knowledge is not very precise.

By Mr. MacIntyre:

Q. In other words, you are not, from any of the hypotheses that Mr. Moore put to you, able to arrive at any understanding as to whether the line of demarcation be-

5144 tween the Pittsburgh basing territory and the Evanston or Chicago basing territory is somewhere up and down the Mississippi River, or west of the Mississippi River, or east of the Mississippi River, are you?

A. I recall that the hypothetical statement said that there had been a price differential, I believe the Chicago price $4 higher than the Pittsburgh price, which would have a tendency to push the boundary farther west than if the prices were the same. But as to locating that boundary, there is nothing given me in the hypothetical question, and I have not other knowledge on which to draw.

Q. Did you have any understanding from what information was given you concerning the location of these two

basing points and the differential between the two as to whether or not the Pittsburgh base price controlled any territory in the north central States, north and west of Chicago?

A. I do not recall anything in the hypothetical statement—

Q. That would lead you to believe that?

A. —that made such a statement.

Q. That would lead you to understand that that would be the case?

A. I do not recall anything that would lead me to that—that is, I am talking about facts which I know now, and my knowledge of the facts is limited to what is in the hypothetical statement.

5145 Q. But there were no facts in the hypothetical statement put to you which would lead you to understand that the Pittsburgh base price controlled the amount in any delivered price quotations in the territory north and west of Chicago?

A. I do not recall such facts.

Q. Do you have a copy of your hypothetical question?

A. No, I have not.

Q. Here is a copy (handing to the witness).

Will you examine that and point out anything that you can see there which would lead you to have developed any understanding along the lines of my last question?

A. (After examining the document.) All I find here is that—

Mr. Stewart: Just a moment, please.

May I have the question?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Stewart: Now, what is the last question?

(Record read.)

Mr. Stewart: Now, I object to the form of the question for the reason that I think it assumes a fact that is not established in any way, namely, that the Pittsburgh base controls any territory. It may operate there, but not controls.

Trial Examiner Norwood: I do not think that bears on this question.

Mr. Stewart: I beg your pardon. The base does not 5146 control anything. It may operate. I don't know.

Trial Examiner Norwood: Are you objecting to the question because it assumes that a base controls?

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Mr. Stewart: Controls.

Trial Examiner Norwood: I think that is well understood, what that word "control" means there—determines the price.

Mr. Stewart: Well, now, that is all right. If Mr. MacIntyre will accept that interpretation, it is agreeable to me.

Mr. MacIntyre: I understand that the witness has used in the course of his examination the words "controlled" and "determined" interchangeably in that respect.

Trial Examiner Norwood: Yes.

Objection overruled.

Go ahead.

A. I do not find anything here to lead me to modify my answer. There is no mention of the northwestern States, so far as I see; and beyond the facts which I have already stated I find nothing further.

By Mr. MacIntyre:

Q. In other words, there is nothing in the hypothesis that Mr. Moore put to you that would permit you to arrive at any understanding as to the size of the Pittsburgh basing territory or the location of the boundaries?

5147 A. Well, I have already said that I was aware that —I would infer that the Pittsburgh area was a territory of considerable size. It is a large territory. But there is nothing here that would permit me to infer its precise size or its boundaries. This is, after all, a statement of facts, and I do not find here enough facts to permit me to make such inferences as you are asking me to.

Q. All right.

Now, Doctor, let me put to you an assumption.

Assume that the base price Pittsburgh, Pa., as announced by rigid steel conduit manufacturers, determines the delivered price quotations made by them in, not only Philadelphia, New York, Baltimore, Washington, and in Pittsburgh, but also in London, in Paris, in Rome, in Alexandria, Egypt, in Singapore, in the Philippine Islands, in Hawaii, in the Panama Canal Zone, in all of the locations of South America, and all of the islands of the East and West Indies, and that in all of those multitudes of locations supply-and-demand factors are such that demand is declining in some of the locations, widely separated, and increasing in others that are widely separated at the same time for rigid steel conduit, but that the seller of rigid steel conduit in announcing his price announced the same Pittsburgh base

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price as applicable in the determination of delivered price quotations for all of those locations.

5148 Is it your testimony, as an economist, based on that assumption, that each of those locations with respect to the making of price and announcements of price on rigid steel conduit are separate markets?

Mr. Stewart: May I have that question? I got lost on that world tour.

Trial Examiner Norwood: All right. Read the question.

(Question read.)

Mr. Robison: Now, the question is objectionable, and I do object to it on the ground that it assumes a whole category of facts concerning which there is no evidence in this case, the most outstanding of which is the assumption that a price announced as at Pittsburgh controls a price in Singapore, and numerous other places. There is no such evidence in the case.

Trial Examiner Norwood: I think he may do that on cross-examination.

Objection overruled.

A. I would not hesitate to say that these places are separate markets, as I defined the term yesterday, but reminding you that they are not independent of each other in the mechanism of price determination.

By Mr. MacIntyre:

Q. They are not independent of the Pittsburgh 5149 base price; are they?

A. No.

Q. And that is what you mean when you say that they are not independent of each other; is that correct?

A. That is part of it.

Q. Well, what is the other part?

A. Well, that involves a good deal of repetition of what I testified to yesterday. The different demand factors in the different markets—I needn't elaborate that further—the different approach to them by salesmen, advertising, and so forth, by manufacturers, the further fact that, which I think I did not mention yesterday, that the manufacturers set different prices in these different markets.

Now, all of those factors indicate, I think, clearly enough that these are separate markets. Now, their relation to each other comes partly through the price-fixing mechanism of the Pittsburgh base on your assumption, partly from the fact that goods manufactured will be sent to this market,

that, or the other, according to the conditions of that market, and there is a relationship between them.

Q. Oh, there is a relation, in your mind, then, as an economist, between Philadelphia, Pa., as a market, and London, England, as a market by the very fact—by virtue of the very fact that Philadelphia uses a good of—that is, that is homogeneous with a good that is used in London?

5150 A. That is part of the relationship.

Q. And what is the nature of that relationship between those two markets?

A. It is largely a relationship of cost of transportation and—

Q. What else?

A. —and of diversion of product the—to the market which the seller thinks is most favorable for the time being.

Q. When you say "matter of transportation" you mean the cost of transportation between two markets; is that correct?

A. Not always between those two markets; between those two markets and between each of those markets and the points of origin of the product.

Q. In other words, the relationship, as you see it under this basing-point system, of those being two markets is that they are related to each other with respect to transportation in that each of them is related to the Pittsburgh base price; is that correct?

A. That was part of my answer. The other was that each of them is related to points of manufacture.

Q. In the announcement of the price?

A. Well, in the—you simply asked me in what way these markets were related to each other.

Q. Yes, but I am asking you now as to that last answer of yours, that they are related with respect to price—

5151 with respect to the place of manufacture, and I am asking you whether or not that is expressed in the announcement of the price.

A. That is one of the factors that enters into price determination.

Q. Doctor, you didn't answer my question. I asked you if it was expressed in the announcement of price.

A. I spent a good deal of time yesterday afternoon trying to clarify the meaning of your word "expressed" and all I get—

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Q. Let us say evidenced in the announcement of the price. Do you have trouble with that also?

A. Yes, if by that you mean that by looking at a price you can get evidence to show you all these different elements that enter into it.

Q. Yes.

A. No price gives that kind of evidence.

Trial Examiner Norwood: Considered in connection with that price, so as to change it in any way whatsoever?

The Witness: Yes; all of these factors I mentioned are capable of influencing the determination of that price.

Trial Examiner Norwood: You mean if they were added up and an average struck? Is that the idea?

The Witness: That would not be the process of doing it. I don't mean that the price at any one of these
5152 places is the average of other prices.

Trial Examiner Norwood: What would be the price?

The Witness: What I mean is that each of these prices and all of the prices are the result of price judgments and policies of manufacturers and sellers, and each one of those informing his judgments, shaping his policies has had to take account of a great variety of factors, both on the demand and supply side.

Trial Examiner Norwood: Considering them together for a combined result; is that right?

The Witness: You get what might be called a combined result, but, of course, no one manufacturer aims at this whole combined result for the whole world, as has now been brought into the question. Yesterday I was talking about one manufacturer with respect to the prices which he himself quoted in his own separate markets.

By Mr. MacIntyre:

Q. And when you speak of the combined result in that connection, Doctor, aren't you there expressing what accepted economic theory expresses when it says that a price announced in a market is an expression of the convergence of the forces of supply and demand upon that market?

A. Yes, I think so, except that my statement dealt with a great many markets instead of just one.

Mr. MacIntyre: Read my question.

5153 Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Is that right?

Mr. MacIntyre: Where the price is announced as effected.

Mr. Robison: Well, the witness has answered the question, if Your Honor please.

Trial Examiner Norwood: Did he answer the question?

Mr. MacIntyre: Yes. Well, we will let that go on.

The Witness: Yes, I answered it.

Mr. MacIntyre: Strike out the last question.

Trial Examiner Norwood: What was the last question? Read it.

Mr. MacIntyre: Strike out the last question.

Trial Examiner Norwood: Strike out the last question, but read me the answer to the previous question.

(Last question and answer read.)

Trial Examiner Norwood: Now, delete everything after that.

Now, proceed.

By Mr. MacIntyre:

Q. And you understood that question of mine, to which you gave the last answer as being—that is, as relating to the price which eventuates out of the market as a
5154 price announcement; is that what you meant?

A. I think I understand that, yes.

Q. Well, that is what you meant in your answer?

A. Is that the language you used in your question? I thought your question was clear and answered it with that understanding. I don't know whether you are changing it or paraphrasing it or not.

Q. I am trying not to, Doctor. I am trying to have it clear as to whether you meant by that last answer that you were referring to the announcement of price which eventuates in this market after taking all of these considerations into account about which you have been talking.

A. Your question was about the accepted economic principle of—

Q. Of—

A. —of price resulting from the forces in the market, and I understood it so.

Q. And expressing itself in a price in the market.

A. Yes. When you say "announcement," now, that is a different word. I don't know that you attach particular importance to that, because the way in which prices were announced wasn't covered in your question.

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Q. Well, the price, then, which is made up, I would say, in the market is the one that you were referring to—

A. The price—

5155 Q. —in your last answer?

A. The price in the market which results from the forces of demand and the supply side of the market.

Trial Examiner Norwood: We will have a five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Is it your testimony that it is a part of recognized and accepted economic theory that a market is a place at which the forces of supply and demand focus themselves and determine market prices?

A. Yes. I think I perhaps should take that answer as I did the other today, by reminding you that under conditions of imperfect competition, what is usually called supply is not quite so simple as was perhaps assumed in such a statement that you have read. I don't think that is a substantial matter for the present issues, and, with that understanding, I shall use the word "supply" to refer to the forces on the supply side in any market and so assent to that statement in principle.

Q. But under conditions of free and perfect competition, would it be necessary to give any qualifications to the answer that you gave to my last question?

A. No, it would not, nor to this either; and it isn't

5156 a question of the freedom of competition. It is just a certain technical difference in supply conditions in these two kinds of market.

Q. Now, while we are on this term "free competition," would you say that one of the requirements for a condition of free competition is that competitors not enter into but remain free from any collusion or combination?

Mr. Robison: Well,—

A. Well,—

Mr. Robison: —is that the question?

Mr. MacIntyre: Yes.

Mr. Robison: Mr. Examiner, I must object to the introduction of that question, which was, "while we are on this question of free competition." What we are on at the moment, derived from the previous question, was a com-

bination of free and perfect competition which, I understand, from an economic point of view, is an entirely different thing.

Trial Examiner Norwood: Counsel is privileged to proceed with the question about either kind, with either qualification or both.

Mr. Robison: My point is that he should make it clear whether—that he is distinguishing now from his former expression.

Trial Examiner Norwood: Yes. Well, I think the
5157 counsel made that clear.

Mr. MacIntyre: I think the answer expressed that.

By Mr. MacIntyre:

Q. What is your answer to that question, Doctor?

A. Could I hear it read again?

Trial Examiner Norwood: Go ahead. Read it.

(Question read.)

A. Of course, collusion and combination is the antithesis of competition, and those are two opposite conditions, and the question of free doesn't seem to me to enter in there. As I have already said, there might be a generally prevailing condition of competition with some little sporadic collusion or agreements here and there, but, taking the whole situation together, would not be sufficient to make it impossible to characterize the whole situation as one of competition. That is, you can have mixed conditions, but, so far as collusion and combination and monopoly go, they are obviously the antithesis of competition, even if you don't bring in the word "free."

Mr. MacIntyre: Now, would you please read the question again? I would like an answer to that rather than an explanation of an answer that you haven't given.

Trial Examiner Norwood: Read it.

(Question read.)

By Mr. MacIntyre:

5158 Q. Since you have already discoursed on that, can't you answer the question now "yes" or "no"?

A. I think I have answered that to the best of my ability.

Q. Well, what is the answer?

Mr. Robison: I submit the witness has given his answer. I object.

Trial Examiner Norwood: Answer it, please.

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A. The answer is that occasional sporadic instances of collusion or combination—that was the other word—may not suffice to change the general character of a situation as competitive. Complete prevalence of collusion or combination would, of course, deny the presence of competition.

By Mr. MacIntyre:

Q. Haven't you testified and made statements heretofore to the effect that in order to have free competition the competitors must not have entered into any collusion or combination?

A. I don't remember the exact wording of the statement I made, but just to the extent that collusion and combination are entered into, competition is reduced.

Q. It isn't free any longer, is it, by the extent into which conspiracy, collusion, or combination is entered into among themselves to restrict their actions?

A. I think of freedom of competition as relating to the absence of compulsion or restraint imposed upon the

5159 competitors.

Q. Through agreements or collusion? That is a restraint upon free competition; isn't it?

A. I was thinking of restraints by law, by government, or others which would prevent the operation of complete freedom of competition.

Q. And it is your testimony here that it is a recognized and accepted principle of economic theory that collusion can be a part of free competition; is that correct?

A. I didn't say that.

Q. Well, what do you say in answer to that question? Is that correct or not?

The Witness: Well, repeat that question, please.

Trial Examiner Norwood: Read it.

(Question read.)

A. No, that is not correct.

By Mr. MacIntyre:

Q. Well, it cannot be, then, according to recognized and accepted economic theory?

A. No. Collusion can't be a part of competition.

Q. That is, cannot be a part of free competition?

A. No.

Q. Well, assume for the moment, October, that each destination in the United States within the territory—that is, within the United States and other parts of

5160 the world within which the Pittsburgh basing point—or Pittsburgh base price plus freight from Pittsburgh determines delivered price quotations are separate markets, as you have claimed them to be, for rigid steel conduit, where does the central force of competition and of supply and demand converge in making a price for one and all such destinations?

Mr. Stewart: I think that question is incomplete. I may be mistaken.

I would like to have it.

Trial Examiner Norwood: Read it.

(Question read.)

A. I am not quite sure of the meaning of the term "the central force of competition." I wouldn't use just that term, but if I may answer with respect to the convergence of the forces of demand and supply, I would say that those converge in each of these separate markets. They also converge for the industry as a whole, and they converge for the territory of a particular manufacturer. When we speak of demand or supply we can refer to the demand and the supply in the particular locality or for a particular manufacturer or for the whole industry.

I have answered with respect to the demand and supply of each of these separate markets.

Q. Well, I am talking about the price that is made as the Pittsburgh base price for all of those locations.

5161 Where does the force of supply and demand converge so as to cause the eventuation of that price?

A. Of the Pittsburgh base price, now—

Q. Yes.

A. —you are talking about?

Q. Yes.

A. That is a matter of the supply and demand of the whole industry.

Q. Where do they converge?

A. They converge at the place where the sellers are determining their price quotations, their Pittsburgh price basing.

Q. That would be Pittsburgh, Pa.?

A. Yes.

Q. And would be at any other place where a base price is determined as you claim; is that correct?

A. The—yes. You see, the—

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Trial Examiner Norwood: That is, with respect to the territory covered by that base, controlled by that base?

The Witness: Yes, and not—not forgetting that the decisions made by sellers or buyers at that base are based upon the conditions in all of these various separate markets. It can't ignore those, but the—

By Mr. MacIntyre:

Q. The force of the conditions in each of those separate markets converge at the base, you say?

5162 A. No; the forces of each of those separate markets converge in the separate markets.

Q. But the combination of all of them converge at the base in the determination of the base price; is that correct?

A. At the base or at the place where base prices are determined. I suppose in some cases that might not be the base.

Q. It might be someone located hundreds of miles from the base but uses the base as the factor for determining his price; is that correct?

A. He would have some part in it, but the primary determination would be by those who are manufacturing and selling in that base territory.

Q. Well, now, assume that he is a considerable distance, a matter of the distance from Philadelphia, or approximately Philadelphia, from Pittsburgh, from the location of the point where the base price is made effective—

A. Yes.

Q. —and that he announces it as of Pittsburgh—

A. Yes.

Q. —for all of these locations. Where have the forces of supply and demand, the combination of all of them as to all of the destinations, converged with respect to that one person? Now, his mill is located in the proximity of Philadelphia.

A. But in the Pittsburgh area?

5163 Q. No, not in the Pittsburgh area. In the Philadelphia area, but the base price—

A. Yes.

Q. —is as of Pittsburgh.

A. Yes, but the area in which delivered prices are related to the Pittsburgh base?

Q. No. Well, yes. In the Pittsburgh basing territory

but where the freight rate is considerably different between his mill and the locations than it is from Pittsburgh to the same locations.

A. Well, the Pittsburgh base price will be determined by certain—certain persons who exercise their judgment, and it will be determined at the point at which they exercise their judgment; that is, the forces will focus at that point, but those forces will have their origin all over the territory in which these goods are sold, both by the sellers in Pittsburgh, whose judgments are determining the quotation, as well as by other sellers who don't take active part in the determination but whose activities are among the considerations which are taken account of by those who determine the—the base price, and if that seems a lengthy answer, I would conclude by saying that the forces thus come together from all about and focus at whatever point is—the decisions are made.

Q. That is, the location of his mill where he makes his decision to announce the base price as of Pittsburgh?

5164 A. No. I was talking about the determination of this Pittsburgh base price. I thought that was the question.

Q. No. But the man in Philadelphia, or in the proximity of Philadelphia, determines what he is going to announce as the Pittsburgh base price?

A. Oh, you are asking about how he makes his determination?

Q. Where do the forces of supply and demand, in their combination for all of these delivery points, converge upon him?

A. They converge upon him wherever he is.

Q. That is, at his mill. And express themselves in his prices which he charges for conduit, irrespective of the fact that he has announced the Pittsburgh base price as of Pittsburgh; is that correct?

A. Yes, that is—that is just his way of announcing the price and whatever form he chooses for his price announcement, he makes decisions, of course, at his location, wherever he is, based upon all the data which he has and which he considers pertinent.

Q. And the forces have all converged upon him there where he makes that decision in Philadelphia?

A. Yes.

Q. Or in the proximity of Philadelphia?

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A. But I am not denying that these forces are also working out in these separate markets and determining
5165 local prices in those separate markets.

Q. We are talking about the converging of them upon him now.

A. Yes, I understand.

Q. Can you cite to us, Doctor, in textbooks of economic writers any statement which is generally accepted and recognized as a part of economic theory, the statement that a price in a market is a base price plus freight from that base price to some destination away from that base price—away from that basing point?

Mr. Robison: I object to it on the ground that it is too well established to be questioned that a textbook cannot be brought into evidence without producing the author to testify like any other witness. Now, this is an attempt to get something in by the back door which obviously could not be brought in in a forthright way. I object to it.

Trial Examiner Norwood: I take it he is merely questioning his authorities here, inquiring as to his authorities, some of this opinion here. He has a right to do that.

Objection overruled.

A. Well, I have no doubt that you could find books on economics which would describe the basing-point system, and if they did would state that the prices in these different markets is the sum of some base price plus freight from the basing point to the market of delivery. Of course, most of the general elementary textbooks are so elementary that they don't get into these matters, but they make
5166 statements which could not be interpreted in any different way; that is, they state that the price of anything is the—relates to a particular market at a particular time and is the quantity of money that would be given by buyers in exchange for one unit of the product.

Now, if that is the price in any particular market, it implies that the goods must be there in that market, and, since the price has relation to the cost and that cost includes the cost of shipment to the market, that will be—that freight charge will enter into the determination of price. You will find plenty of economic textbooks that will state that general principle, that is, the general principle that cost of transportation from point of manufacture to the market is one of the elements that enters into the market price.

By Mr. MacIntyre:

Q. I ask you again, Doctor, can you cite any authority which expresses generally accepted and recognized theory containing the statement that a market price is a base price, that is, a market price, say of a manufacturer with a mill located at one location and quoting a base price applicable at another location plus freight therefrom, is a market price at any location?

Mr. Stewart: Now, I submit that that question is utterly unintelligible.

Trial Examiner Norwood: Objection overruled.

5167 Mr. Stewart: I ask that you have it read again. I ask that the question be read again and see if it is intelligible.

Trial Examiner Norwood: It does not have to be read for me. If you want to have it read, I will have it read.

Mr. Stewart: I would like to have it read.

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Answer that question.

A. I am not able to cite from memory the authors who have made precisely that statement of principle, but, as I say, I am sure that a little research would discover a number of recognized authorities who would make that statement with respect to the conditions in the—of a basing-point method of pricing, and I also am certain that I can cite any number of writers who, without specifically mentioning the relation between the base price and the cost of shipment, would announce general principles which could be interpreted only in that way.

By Mr. MacIntyre:

Q. I am asking you if you can cite any authority. You consider that you, of course, have read economics over a period of many years and all of the authorities, so now I ask you if you can cite any of them.

5168 Mr. Robison: I don't consider that this is the proper time for counsel to deliver an address to the witness, Your Honor.

Trial Examiner Norwood: Do you object?

Mr. Robison: I do.

Trial Examiner Norwood: Objection overruled.

Go ahead.

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By Mr. MacIntyre:

Q. Can you cite any authority to the effect of my last question or two?

Mr. Stewart: I object on the ground that the question has already been answered.

Mr. MacIntyre: No. He has said that doubtless I could find some. I am asking the witness now to tell me where they are.

Mr. Stewart: No, sir. He—

Trial Examiner Norwood: I am going to overrule the objection and ask the Doctor to give us any citations either to the principle as described by the counsel or the principle as referred to by himself in his answer to the previous question.

Mr. Stewart: Will you pardon me, and read his previous answer? He said, "I can't cite you any at the moment." That is the point of that.

Trial Examiner Norwood: Please let him answer that.

5169 The Witness: I have answered that, Your Honor.

Trial Examiner Norwood: Can you cite us any authorities?

The Witness: If you gave me a little time to check up on the authorities, I could doubtless produce them.

By Mr. MacIntyre:

Q. In your preparation for your testimony here you didn't prepare yourself to present any such information; did you?

A. Well, I regarded the general statements of economic principles in most of the economic textbooks as being so clear on that point that—

Trial Examiner Norwood: Now, you are giving the explanation. He is asking you for the fact. So your answer—

The Witness: I understand now.

Trial Examiner Norwood: Yes. Just answer his question; then you may explain later.

A. I didn't make an attempt to go out and check up on writers who had stated that the market price in some place was the sum of the base price plus freight. I didn't regard that as necessary.

By Mr. MacIntyre:

Q. Now, if you know of any such statements in recognized and generally accepted economic literature, will you please present it to me, the statement?

A. Will you give me time?

5170 Q. Showing pages and volumes and the names of the authors.

Mr. Stewart: I submit that that is not the duty of the witness. That is the duty of counsel. If he wants to hunt something let him hunt it. It is not the duty of the witness to find it for him.

Trial Examiner Norwood: I think the counsel is out of order unless he made a motion or an objection.

Mr. Stewart: Well, I object, then, on the ground that the request is not proper.

Trial Examiner Norwood: Objection overruled.

Go ahead.

By Mr. MacIntyre:

Q. Will you do that, Doctor?

A. I will undertake to do that.

Q. That is, a statement to the—

Mr. Robison: I assume it is to be understood that that data, when furnished, are to be offered for the record. May we have it so understood?

Mr. Stewart: Absolutely.

Trial Examiner Norwood: There is no understanding about it. The counsel may come to an understanding.

Mr. Robison: Well, then, I want to reserve—

Trial Examiner Norwood: Those questions will be decided when they are properly presented; not before.

Mr. Robison: Well, I wish to reserve the right,

5171 then, when that occasion arises, to offer the data that may be furnished.

Trial Examiner Norwood: Counsel is entitled to reserve any rights in that respect and know that he has them. They will not be denied him.

Go ahead.

By Mr. MacIntyre:

Q. Is it your testimony that you have not stated heretofore that it is well recognized among economists that different interpretations placed upon delivered prices hinge upon different meanings attached to the term "market" and market price?

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A. Can I hear that again?

Trial Examiner Norwood: Read the question.

(Question read.)

A. There are—there are some different interpretations of the term "market".

By Mr. MacIntyre:

Q. Isn't it a fact that you have testified heretofore, Doctor, that the whole subject and meaning of "price" is a matter of terminology?

A. Well, I may have testified to that, simply meaning that it is a matter of definition.

Q. So you would have to first determine where your market is before you could say whether or not that
5172 there is a price in that market; wouldn't you?

A. Well, whatever price you mention would have to be with respect to some market.

Q. To a market?

A. To a market.

Q. And before it could be said to be a market price in that market, you would have to know the limitations of that market; would you?

A. Well, I don't know that the geographical limitations are so important.

Q. Well, at least you would have to know the location of the market before you could say that there is any market price in any market; wouldn't you?

A. Well, you could say that there is a market price in a market and then if somebody asked you what market you were referring to you would locate the market.

Q. But before you could identify any so-called market price with any so-called market you would have to know what market that you are talking about?

A. Yes.

Q. Isn't that correct?

A. Yes, that is correct.

Q. And could it be a market price, in your opinion, if it was a monopoly market?

A. Yes. You have monopoly prices and com-
5173 petitive prices.

Q. And there is no way of distinguishing whether it is a monopoly price or a competitive price, if you merely state that it is a price or a price in a market; is there?

A. No; if you simply stated "a price in a certain market," gave no other information, one would not know whether the conditions were monopolistic or competitive.

Q. And before you can determine that, it would be necessary to know whether or not there is collusion or combination operating in the direction of monopoly in a market; isn't that correct?

A. Well, before you could know—in simple language, before you could know that a price was a competitive or a monopolistic price, you would have to know whether the conditions in that market are competitive or monopolistic.

Q. And whether the operators in that market are in collusion; isn't that correct?

A. Well, collusion isn't quite the same as monopoly, you understand.

Q. Yes, but you don't have a competitive price if you have collusion among the operators in a market on the price; do you?

A. No, but not necessarily a monopolistic price.

Q. But before you can say that it is a competitive price you must first know whether or not there is collusion among the operators in the market to which you are referring?

5174 A. You must know whether there is sufficient collusion to make the character of the market not competitive. As I have already said, there could be sporadic cases of agreement or agreement on minor matters of no great significance, which would prevent your saying that there is complete absence of agreement, but those might not prevent this being on the whole a competitive situation. If the agreement or collusion went to the extent of preventing competition, then, of course, it would no longer be a competitive market.

5175 Q. Is it your testimony that there might be competition in a market, even though there is collusion among operators in the market, which influences prices in that market?

A. Well, if the—it is a matter of degree, as I have already said. I can conceive a case in which there might be some collusion which would have a very slight effect on the price. There might be collusion as to certain minute detail of discounts, say, or certain terms of service, or things of that sort, and yet there being no collusion or

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agreement on the other matters you would still have
5176 a competitive market even though you might say that this sporadic or limited collusion might have some minor effect upon the price.

Q. Suppose—

A. The major influences are competitive and the price is still a competitive price. Now, as I say, that is a matter of degree.

Q. Suppose that it is a continuing collusion and not sporadic—

Mr. Stewart: I object on the ground—

Q. —but—

Trial Examiner Norwood: Go ahead.

Q. —but it merely slightly influences price.

Mr. Stewart: I object on the ground that counsel stated there was one more question. He had had that question. I think the subject has been exhausted.

Mr. MacIntyre: I can't help what the witness answered.

Trial Examiner Norwood: I can't hold him to that.

Mr. Stewart: I object on the ground that the question already has been answered several times. We are simply running around in a circle.

Trial Examiner Norwood: Objection overruled.

A. I think I have answered that question by saying it is a matter of degree. You start with just a little agree-
ment and collusion on minor points, sporadic, you
5177 increase it to make it less sporadic, more continuous, more important, and you get to the point where you will destroy the competitive character of your market. Hypothetically, it is very difficult to go beyond that.

Q. Suppose, instead of it being sporadic, it is continuing, as I have just asked you, but it does not control but merely influences the prices; then is it a competitive market?

A. If it were continuing and its influence were very slight on price so that the major result of price would be determined by competition, the presence of that slight collusion might not be—prevent this being a competitive market.

Q. How do you draw the line as to where that degree would shade from one into the other between perfect competition and the other extreme, perfect monopoly?

A. I don't—I don't draw that line. It can't be done in this theoretical statement like this.

Q. Do you know of any one economist who has ever drawn the line as to where there is a separation between perfect monopoly and perfect competition?

A. As a theoretical statement, you mean?

Q. Yes.

A. I don't know of any because it can't be done that way.

Q. But it does shade in one direction or another by way of degrees; is that correct?

A. The question you asked me had to do with the
5178 presence in a generally competitive market of a certain slight degree of collusion. Now, since the distinction of a market as between competitive and monopolistic does involve matters of degree, there might come a point when the collusion was so great that you could no longer call this a competitive market.

Q. But you can't tell us where that mark would be or that limit would be?

A. There is no way of telling you in a theoretical statement where that limit would be, except, as I say, it will come to a point where the price is not determined by competition.

Q. That is a matter of fact?

A. That would be a matter of fact and judgment on the basis of the facts.

Q. But you do recognize that the restraint on competition would be by degrees all the way from perfect competition to perfect monopoly; isn't that correct?

A. Yes, but I want to warn against thinking that somewhere in between there is imperfect competition. This is a very different distinction you are speaking of now.

Q. Well, when you slide down the scale by degree to any degree less than perfect competition, you have some imperfections, don't you?

A. Not in the way in which we use that term "im-
5179 perfect competition," no.

Q. But in the way in which Adam Smith and other economists have used the word "imperfection" in describing competition; that is true, isn't it?

A. Not altogether, no.

Q. Well, in what way is it not true, Doctor?

A. Why, the word "imperfection," I don't think is very generally used in this way in which you are using it now.

Q. Hasn't Adam Smith and other economic writers—

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Mr. Robison: Well, I don't think the witness has been allowed to answer the last question, Mr. Examiner.

Trial Examiner Norwood: I think he has. Go ahead. You may come back to it if you want to.

Mr. Robison: He was asked to explain something and he was allowed to give one short part of an explanation when he was interrupted by another question.

Trial Examiner Norwood: Proceed.

A. I don't recall just how Adam Smith and other economists have used the word "imperfection." I don't undertake to recall their particular language, but I can state definitely that Adam Smith, for instance, wrote before economists have drawn the present distinction between perfect or pure competition and imperfect competition, and his use of the term "imperfect" would not be related to our present technical use of it.

5180 By Mr. MacIntyre:

Q. Is it your testimony now that economists, including those that wrote at the time of Adam Smith, including him, and including those since then, have not recognized as a part of economic theory that there are imperfections in competition that shade down below perfect competition in the direction of monopoly?

A. No, I am not testifying to that.

Q. Well, isn't it a fact that they have so recognized imperfections in competition that shade away from perfect competition in the direction of perfect monopoly?

A. All I am saying is that I am not sure that they have used just those particular terms.

Q. Well, you know that they have used terms that are descriptive of imperfections in competition to describe such a situation; isn't that correct?

A. I know that they have discussed competition and monopoly, described them, and explained the features of the one or the other; and, so far as I can recall, it is doubtless recognized that there may be mixed conditions in which there is the presence of both monopolistic and competitive features, but I do not recall that they have graded down this thing into a scale.

Q. Is it your testimony that they have not described those conditions which are less than perfect competition as containing imperfections in competition?

5181 A. I do not recall that they have used just those terms.

Q. Is it your testimony that they have not used those terms?

A. I say I do not recall whether they have or have not used those particular terms.

Q. Hasn't one of the terms that has been used to describe conditions of competition less than perfect competition, but shading in the direction of monopoly, been the term "monopolistic competition"?

A. No. I think that term is used as a modern economist uses the term "imperfect competition," to describe this particular kind of competitive condition, not as a matter of shading from one to the other.

Q. And it is your testimony now that economists have not stated as a part of accepted and recognized economic theory that conditions of monopolistic competition exist in situations which approach monopoly?

A. No, I can't testify that no economist has ever used that language, and I can't recall the precise language that economists have used. I can testify that some economists have recognized this gradation from pure or perfect competition to monopoly. That has been recognized.

Q. And is it your testimony that in that connection they have not used the term "monopolistic competition" to describe the situation that grades down from perfect competition?

A. No, I can't testify that no economist has ever
5182 used that term. What I said was that economists generally use the term "monopolistic competition" in modern times as I have used the term "imperfect competition."

Q. That is, to describe the condition which was described to you in hypothetical question A by Mr. Moore; is that correct?

A. Well, not to describe that particular condition.

Q. I know, but to describe conditions equivalent to that?

A. Well, not that either, because imperfect competition describes a variety of conditions, and the statements in the hypothetical question do not conform to all of these various conditions which would be included under imperfect competition.

Q. But you have stated that you regarded the condition or the situation which was described by Mr. Moore as being one of imperfect competition.

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A. Yes.

Q. And hasn't that same condition which he put to you —that is, which he described in his hypothesis one which has been described generally by some economists as a condition of monopolistic competition?

A. I am not aware that any economist has described the particular facts stated in this hypothetical question.

Q. No, but a condition equivalent to that, or similar to it.

A. Well, I would hesitate to say that also. I already got this from the other side by saying that the condition
5183 of imperfect competition which I have described, and am permitted to describe in general terms, is by some writers called monopolistic competition.

Q. Are you acquainted with any of the writings of Professor Chamberlin of Harvard, and particularly his books entitled "Monopolistic Competition"?

A. I am somewhat acquainted with his books.

Q. Didn't he in those books describe conditions such as those described by Mr. Moore in the hypothetical question and refer to them as conditions of monopolistic competition?

Mr. Robison: I object to that, Mr. Examiner, on the ground that it is an attempt to bring the works of some absent author into evidence.

Trial Examiner Norwood: Objection sustained.

Mr. MacIntyre: If Your Honor please, the witness has said that he could not recall any of these, and I am recalling some to his mind, and he states that he does recall those.

Trial Examiner Norwood: I do not think that you can get another scientist's opinion indirectly in that way, not unless this witness has testified that he has relied on it and his opinion is based on it.

Go ahead.

Mr. MacIntyre: Well, he has stated that some of his answers here, as to whether they have used these
5184 terms, is based upon his knowledge as to whether they have used them or have not used them.

Trial Examiner Norwood: Your question there goes to bringing out those other scientists' opinions.

(Whereupon, at 12:05 o'clock p. m., a recess was taken until 1:30 o'clock p. m. of the same day.)

5185 Afternoon Session.

Room 388,
1:45 P. M.

Trial Examiner Norwood: The hearing will come to order. 1:45.

Proceed with the cross-examination.

FRED ROGERS FAIRCHILD resumed the stand and testified further as follows:

Cross-Examination by Mr. MacIntyre (Continued).

Q. Doctor, are you acquainted in the field of accepted economic theory with the term "forestalling the market"?

A. Yes. I think that term is sometimes used to mean buying up goods in order to sell later. I understand it has various connotations. I think it is one used rather loosely.

Q. Do you know of its application in the field of economic theory to a situation where a buyer leaves the market, goes out and meets the goods coming in and buys them up before they get to the market, so that they cannot enter into a market transaction?

A. I would not want to be absolutely sure of my recollection, but I think that was about the sense in which it was used in describing the procedure in the old medieval markets.

Q. In other words, it was a matter of taking out of the markets transaction which would have gone into the true market; is that correct?

5186 A. I think that is a correct statement. Specifically, it was the buying up of goods that were destined to the market, getting them before they got to the market.

Q. In that manner it applied, then, to the taking out of the market a transaction which otherwise would have gone into the market?

A. I would not say quite that. It means preventing certain goods that were destined to the market from getting to the market. Whether they related to a transaction or not would be, of course, another question.

Q. Well, most certainly if there is a forestalling of the

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market, it tends towards curbing of transactions in the market which would have otherwise occurred.

A. I think you can say it tends toward reducing transactions; yes.

Q. The number of transactions.

A. It has the tendency, yes.

Q. Will you please define for us the term "discrimination" as it applies to the act of a seller in selling goods to a number of his buyers and as it relates to price?

A. I am not aware that that term "discrimination" has a technical definition in economics. I could give you what I suppose would be the common understanding of its meaning under those conditions.

Q. Well, will you please give us a statement of
5187 what you consider to be an example of discrimination by a seller in his sales of goods to a number of his buyers with reference to price?

A. Well, there again I repeat that this is not a technical economic definition, but the term might be applied to an act of a seller in which he charged different prices, or made different offers, to different buyers under conditions that were otherwise the same.

I say that term might be used to describe that act. I do not want to be understood as saying that that is a technical definition of a scientific term.

Q. I will ask you this question:

If a seller in making sales of rigid steel conduit to a number of his customers did so at different prices which did no more than make due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which the conduit was thus sold to such purchasers, would he be discriminating in price?

Mr. Stewart: I object to that, on the ground that it is asking the witness for a legal definition of "discrimination." Obviously counsel is reading from some statute or book.

Trial Examiner Norwood: He may ask him that if it is within the range of the direct examination. I do not see where this discrimination comes in here, unless
5188 you want to make this witness your own.

Mr. Stewart: I don't, either.

Mr. MacIntyre: If Your Honor please—

Mr. Stewart: He has not testified as to what constitutes discrimination.

Trial Examiner Norwood: Did he testify to that?

Mr. MacIntyre: Oh, certainly, for a matter of a half a day. He testified as to what he considered were the effects of a manufacturer charging different prices to different customers and, in fact, whether certain goods in his opinion could be considered as constituting charges of different prices. I do not say that he used the word "discrimination," but I do not have to use exactly the same words that he used in my questions which go to the same point.

Trial Examiner Norwood: Well, I am inclined to think counsel is right about that.

Go ahead.

Objection overruled.

Mr. MacIntyre: May we have the question read?

Trial Examiner Norwood: Read it.

(Question read.)

A. There are not enough facts given me to say definitely whether he would be or would not be discriminating, but I will say that he would not necessarily be discriminating.

By Mr. MacIntyre:

5189 Q. Do you see any differences in prices charged one from the prices charged other customers in that assumption?

A. Well, you did not say that the customers were in the same places, for one thing.

Q. Is it necessary for you to know where the customer is located in order to determine whether or not that he is being discriminated against in price?

Mr. Robison: Well, now, Mr. Examiner, I feel at this point I should object to this. The witness has said that he does not recognize the word "discrimination" as one used in economics, and when he was asked to give his definition of "discrimination" he distinctly said that he was not giving it as an economist or as a scientific statement of a definition. Now, I do not know whether counsel's intention is to ask him for a legal conclusion or not; but, whether or not, I think the question is improper under the circumstances.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

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Answer that.

A. It is not necessary for me to know where he is located, but I would want to know whether the two or more customers you have in mind are located in the same or different places.

By Mr. MacIntyre:

Q. Well, if due allowance is made for the difference in cost of delivery to those two customers, irrespective of where they are located, then is it necessary for you to know whether or not that they are located at one place or the other?

5190

A. Yes. You are getting far beyond the conditions that would permit one to label this procedure as discrimination.

Q. Well, Doctor, if a seller of rigid steel conduit in making sales of conduit to two or more customers does so at a price which is the equivalent of $1 plus freight from place of shipment to wherever the goods is shipped, and that price of $1 is not different to one or the other, is there discrimination in price in those sales?

A. I understand I am still to assume that these buyers may be at different places.

Q. Oh, yes.

A. I would not be able to say that there is discrimination.

Q. Assume that a seller of rigid steel conduit is located 15 miles from Philadelphia, approximately 15 miles; that he sells and ships conduit from that location to customers in Philadelphia and to customers in Washington, D. C.; that the freight on those shipments is much more to Washington, D. C., than to Philadelphia; that his unit price on conduit to customers,—that is, his unit price in the form of a mill net at his place of shipment near Philadelphia is the same for customers in Philadelphia and for customers in Washington, but when the freight is added to that the cost of the goods, after they are delivered to the customers in Washington, is much more than the cost to the customers in Philadelphia.

5191

Now, has that man in making those sales discriminated as between those customers?

Mr. Stewart: I object unless that question is restricted to an inquiry of the witness as to whether or not that is discrimination from an economic standpoint, because obviously it is asking him for a legal opinion as to whether or not that constitutes discrimination.

Trial Examiner Norwood: It must be so restricted. Answer that from an economic standpoint as to whether one is disadvantaged in the way of a higher or lower net price.

The Witness: Well, in the first place, the question stated that the price to these different customers was the seller's mill net. That is a use of language which I do not employ.

Mr. MacIntyre: No. I said the mill net was a uniform amount of a unit price of $5, or unit amount of $5.

The Witness: Can we have the question read, please?

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: I did not assume anything in that direction, Doctor.

(Question read.)

5192 The Witness: I think you will see, Your Honor, that the question does identify the price to the customer with the mill net of the manufacturer.

By Mr. MacIntyre:

Q. Let us assume in that connection, Doctor, the further fact that that mill location is the market of those transactions. Does that help you?

A. No, it does not, because the market for those transactions is at the point where the goods are delivered.

Q. Well, can't you assume with me that it was at the point where they were produced?

A. No, I am unable to—

Mr. Robison: It seems to me, Mr. Examiner, that it is asking the witness to assume that two and two make five.

By Mr. MacIntyre:

Q. In other words, you are not willing to accept any assumption of mine that these transactions were such that the sales were at a market at the mill?

A. I will accept for the purpose of the question the assumptions of fact.

Q. All right, do that.

A. But I can't accept assumptions as to the definition of "market" or any other definition.

Q. Well, assume that that is the market here in my question.

5193 A. I can't assume that, because it is contrary to the hypothesis of your question.

Q. In what way?

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A. Because you are assuming that the market is not at the delivery place.

Q. No. I am assuming that the market is at the place from which the goods were shipped.

A. Yes, but you are not assuming that that is the place where the goods are delivered.

Mr. Austin: If Your Honor please, I suggest that this is argument now, and not cross-examination.

5194 Trial Examiner Norwood: Objection sustained.

By Mr. MacIntyre:

Q. Well, Doctor, assume that a rigid steel conduit manufacturer with a plant approximately 15 miles 5195 from Philadelphia makes sales of rigid steel conduit to a number of his customers in Philadelphia and to a number of his customers in Washington, D. C., and in doing so he charges them amounts which are $5 per unit at his mill, that is, mill net amounts of $5 at his mill, to his customers both in Philadelphia and in Washington, but that the costs to the customers in Washington, after the conduit is in their hands in Washington, is more than the cost is to the customers in Philadelphia after the conduit is in their hands by virtue of the differences in their location from the manufacturing plant; assume further that the market is on those sales at this plant approximately 15 miles from Philadelphia.

Now, has the manufacturer in that instance, in your opinion as an economist, priced his merchandise so as to, through that act of pricing it, put his customers in Washington at a disadvantage to customers in Philadelphia?

A. Well, now, you have introduced again two assumptions which I can't—on which I can't base an answer. You have said in substance that this seller charges his customers his mill nets. Now, I don't—

Q. Can't you assume that for the purposes of this question?

A. No, I can't because he charged them delivered prices.

Q. Well, I am assuming that he charges them this mill net.

Trial Examiner Norwood: Well, you are assuming that he charges the mill net plus the freight in each case.

5196 Mr. Robison: Mr. Examiner, I call your attention to the fact that in this question now asked there was no reference to freight.

Trial Examiner Norwood: Well, its cost of delivery.

Mr. Robison: If I may differ, that term was not used.

Mr. MacIntyre: Well, if Your Honor please, I ask that the witness be instructed to answer that question on the basis of my assumptions.

Mr. Stewart: Let me have the question, will you, please?

Trial Examiner Norwood: Well, he started to answer there.

Read the question.

(Question read.)

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: Now, if Your Honor please, before the witness begins to answer, I want to show you a question and answer that he gave.

Mr. Stewart: What page? What page?

Mr. MacIntyre: I am referring to page 4946.

Mr. Stewart: That was your cross-examination.

Mr. MacIntyre: No, it happens to be a part of Mr. Moore's direct examination.

Mr. Austin: What lines?

5197 Trial Examiner Norwood: Answer the question.

A. Well, I assume from the question now stated that this manufacturer sells to these customers the product right there at the point of his manufacture, because you said he sold it—

By Mr. MacIntyre:

Q. I am asking you to assume that that is the market, where the sales occur.

A. Well, where the goods are delivered. You see, I can't assume that a market is other than the place where the goods are delivered, and—

Q. Well, we have got your assumptions as to a market and definitions as to a market. Will you please answer the question in the light of all of the testimony that you have given here and based on those assumptions?

Mr. Bozeman: Mr. MacIntyre, why not let him answer it and stop interrupting him until he completes his answer?

Trial Examiner Norwood: That is off the record.

A. I will assume, for the purpose of my answer, that the seller sells these goods and delivers them to his customers at the point of manufacture.

Trial Examiner Norwood: Now, that wasn't the question he asked you. That is another question now. You answer his question.

Mr. Robison: Mr. Examiner, if I may submit, I think

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that was certainly in view of the witness' definition of
5198 a market that was necessarily involved in the assumptions on which he was asked to answer a question.

Trial Examiner Norwood: Can you answer it under the assumptions that the counsel has made here? If you can't, you say so.

The Witness: The question doesn't make sense if I have got to assume that the price is at the place of his manufacture but that the delivery is at some other place, because I don't know what the delivered price is. That wasn't brought into the question at all. The question, frankly, doesn't make sense to me.

Mr. Austin: Then you can't answer.

Trial Examiner Norwood: That is his answer.

By Mr. MacIntyre:

Q. Assume that a number of rigid steel conduit manufacturers are making sales to—strike that.

Assume that a number of rigid steel conduit manufacturers with plants located near Philadelphia, Pa., near Pittsburgh, Pa., near Youngstown, Ohio, and near Butler, Pa., are making sales of conduit to their customers a number of whom are located in Washington, D. C., and Philadelphia, in Pittsburgh, in Chicago, in St. Louis, and to others located in points adjacent to Chicago, and that on those sales they quote—and in connection with those sales
they quote prices which are different to these cus-
5199 tomers, both as to a delivered—that is, when considered from a delivered price angle and also when considered from the angle of mill nets. Are those sellers of conduit under that situation discriminating in price among their customers?

Mr. Stewart: I object unless it is confined to discrimination from an economic standpoint.

Trial Examiner Norwood: You will so confine the answer.

A. From an economic standpoint, I can't tell whether they are discriminating or not because there are certain facts missing.

Trial Examiner Norwood: What is missing?

By Mr. MacIntyre:

Q. What is missing now?

A. Well, these customers are in different places, and I

am told to assume that they are charged different prices. That is a perfectly natural situation. It doesn't necessarily involve any discrimination, and that seems to me to be as far as the question goes.

Trial Examiner Norwood: You mean they charge different amounts but which are based on the same basing price? Is that included in your assumption?

Mr. MacIntyre: I did not assume the basing price there.

The Witness: But the question—I should go on to
5200 say the question did say something about the mill nets being different.

Trial Examiner Norwood: Yes.

What did you mean by "mill nets"?

Mr. MacIntyre: The amounts covered at the mill in those instances after deduction of freight from any delivered price quotation.

The Witness: That didn't bother me any, Your Honor. The fact that mill nets to different customers are different doesn't involve any inference of discrimination.

By Mr. MacIntyre:

Q. Whether that the differences are based on differences in freight from the point of production to where the customers are located?

A. Until you have your customers in exactly the same place, so that all conditions are exactly the same and yet there is a differentiation in price, there is nothing in your assumptions to lead to a necessary inference of discrimination. These customers were very widely scattered, and it would be a perfectly natural result that both the delivered prices and the mill nets would be different.

Trial Examiner Norwood: Under those circumstances there might be discrimination in some cases and there might not in others?

The Witness: Oh, yes. I can't tell that there is
5201 not discrimination, but I can say that there is nothing in those hypotheses that set up an inference that there was discrimination. It is indeterminate.

By Mr. MacIntyre:

Q. Assume that this same conduit manufacturer, located approximately 15 miles from Philadelphia, in his sale of conduit to customers located in Philadelphia and to customers located in Washington, D. C., does so in such

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a way that the customers in Philadelphia pay him prices which permits him to recover at his mill higher mill nets than his customers in Washington; they, however, pay him lower—strike that.

They, however, in doing so, merely deduct from a delivered price quotation an amount which is much lower than the amount which is deducted from the delivered price quotations in Washington; and, further, that the delivered price quotation to the Philadelphia customer is lower than the delivered price quotation to the customer in Washington.

Mr. Stewart: I am sorry.

Q. (Continuing.) Does that present a picture of price discrimination—

Mr. Robison: If Your Honor please—

Q. (Continuing) —to you as an economist?

Trial Examiner Norwood: Wait a minute.

Mr. Austin: I want to object to that question on the same ground that I stated before, that we are not try-
5202 ing a discrimination case. Now, Mr. MacIntyre has brought to your attention the question on direct examination which refers only to disadvantage to the buyer; doesn't talk about discrimination of any kind.

Furthermore, I want to object to this question on the ground that it is confusing, meaningless, and lacks at least three subjects where it has predicates.

Mr. MacIntyre: I think I should have said at the outset "the sale of conduit."

Mr. Stewart: I guess you didn't have any subject at all. That is where I get lost.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: That is, in his sale of conduit.

(Discussion off the record.)

(Question read.)

Trial Examiner Norwood: Answer the question.

Mr. Austin: Have you ruled on my objection, sir?

Trial Examiner Norwood: Objection overruled.

Mr. Austin: If I may, without—with due deference, press the fact that this is not a price discrimination case—

Trial Examiner Norwood: Yes.

Mr. Stewart: Well, I take it the question is also subject to qualification, as suggested, that is, from an economic standpoint.

Trial Examiner Norwood: Oh, yes, strictly from an
5203 economic standpoint as to the effect on these customers.

A. That question is in some points not wholly clear, but I think I am able to answer it, but that again does not set up a presumption of discrimination in the economic sense, as I understand it.

By Mr. MacIntyre:

Q. Well, why doesn't it?

A. Well, because the—

Mr. Robison: Well, I—

Trial Examiner Norwood: Wait a minute. Let him answer the question, or are you objecting to the statement?

Mr. Robison: I want to make an objection to it, Mr. Examiner. It is incompetent to ask him why something doesn't exist.

Trial Examiner Norwood: He is simply asking him for an explanation. Yes, you can ask a man why something doesn't exist, if he knows it.

Mr. Moore: May we have the question? I misunderstood it, if that was the question. I understood him to say "Why does it?"

Mr. Robison: "Why doesn't it?"

Trial Examiner Norwood: Answer the question, if you can; that is, to explain your previous answer.

A. Yes. I take it, the question is, Why doesn't the previous situation set up an inference of discrimination,
5204 and the principal reason it doesn't, apart from certain ambiguities in the question itself, is that these buyers again are located in different places. As long as they are, you can't tell whether there is discrimination or not between them.

Q. Is it your testimony, Doctor, that two buyers must be located in the same place in order to determine whether or not you are discriminating between them in your sales?

A. That was the purport of my definition of "discrimination" when you first asked it, that all the other circumstances are the same.

Q. That they must all be in the same location before you can determine whether there is any discrimination in sales to them?

A. Yes, but you understand I have said discrimination is not an economic term, but I am using what I consider a

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popular meaning of that term and which would imply that there were some price differentiation to two or more customers who were otherwise in just the same position. With some other definition of "discrimination," if there is such, there might be a different approach, but that is my idea of what discrimination means.

Trial Examiner Norwood: Well, would that mean economic inequality with respect to the price to the customer, to these various purchasers?

The Witness: Well, I take it that there was ine-
5205 quality between the prices if the prices were different. That is what "inequality of price" means to me.

Trial Examiner Norwood: Economic inequality. That is, on the part of one there is a charge there that is not in the same proportion to the costs and the mill price—

The Witness: Well, we—

Trial Examiner Norwood: —as the other has to pay?

The Witness: Yes. We economists again don't have a technical term, "equality" or "inequality."

Trial Examiner Norwood: I am not asking you for a technical term, but I am just asking you what the results would be there.

The Witness: Yes, I understand. If you ask me if there is inequality as to prices, all I would think of, Is the price the same or not? If the prices are different, then the prices are unequal. It doesn't mean any more to me.

Trial Examiner Norwood: Well, would it mean that he is charging one man at a different basis than another?

The Witness: Well, I would want to be asked that question, too.

Trial Examiner Norwood: In other words, here is your base price. Say that is A, and your freight is B. Now, if he charged A plus B exactly to one, and then charged the other A plus B plus X, wouldn't there be an economic inequality there? Would he be treating them both alike?

5206 The Witness: No. Obviously you have described a situation in which they are not both treated alike, because one of them has the "X" added and the other doesn't have it.

Trial Examiner Norwood: Well, there would be an economic inequality there; would there not be?

Mr. Moore: Well, may I—

Trial Examiner Norwood: Well, assuming that to be

an economic inequality, and in the statement made by the counsel here in the last question, would there exist an economic equality in those circumstances?

The Witness: An equality?

Trial Examiner Norwood: Inequality.

The Witness: Oh, inequality.

Trial Examiner Norwood: Economic inequality as between the two.

The Witness: Inequality. Well, I am troubled there because I don't know just what "economic inequality" is as a general—

Trial Examiner Norwood: Well, we just got into that. It is A plus B for one party and for the other is A plus B plus X.

The Witness: Well, there is an inequality so far as those items go. By adding different items it will produce different results. But that doesn't mean any more than
5207 that to me.

Trial Examiner Norwood: You would not think that would be a prejudice to either one?

The Witness: It may not be.

Mr. Robison: May I register an objection to that question, Your Honor, on the ground that it calls for mere speculation and not expert testimony?

Trial Examiner Norwood: It is on the same subject that we have been inquiring into.

Mr. Robison: Well, I object to the question.

Trial Examiner Norwood: Objection overruled.

Mr. Moore: Is it not a mathematical equality or inequality and not an economic one? A plus B plus—

Trial Examiner Norwood: I was asking him—you may ask him on redirect. That is the question I was asking him, if a mathematical inequality there were not an economic inequality. That is what I am trying to find out and you are asking that of me.

The Witness: Well, I am afraid I didn't quite understand the purport of your question, Your Honor. All I pointed out was that there was this mathematical inequality.

Trial Examiner Norwood: Yes.

The Witness: Now, I am not aware of the economic terms of "equality" and "inequality which would enable me to say, on the basis of the hypothesis before, that
5208 that was or was not economic inequality, whatever that term might mean.

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By Mr. MacIntyre:

Q. You do admit, however, that it is mathematical inequality, whether it could be determined as an economic inequality or not, to your mind as an economist; is that correct?

A. Well, A plus B is not the same as A plus B plus X unless X is equal to zero.

Q. Now, assume this plant 15 miles from Philadelphia, rigid steel conduit plant, is operated by a conduit manufacturer who sells rigid steel conduit to customers in Philadelphia and to customers in Altoona, Pa.; assume that the market for the conduit—that is, thus sold—is at the plant at Conshohocken, Pa., near Philadelphia; assume that in making such sales that manufacturer quotes delivered price quotations to the customers in Philadelphia which are higher than delivered price quotations in Altoona; assume that the mill nets he recovers from his customers in Philadelphia on sales made to them at his market, Conshohocken, are higher than the mill nets he secures from his customers who reside in Altoona.

Is that a picture of discrimination in price?

Mr. Stewart: I object on the grounds it is not limited to an economic sense.

Trial Examiner Norwood: It must be so limited.

Mr. MacIntyre: Yes, we are limiting all of these this way.

5209 Mr. Stewart: You are not limiting it.

Mr. Robison: I object, further, on the ground, Mr. Examiner, that it is not the proper subject of cross-examination; doesn't have any reference to anything that was gone into on direct examination.

Trial Examiner Norwood: Objection overruled.

Proceed. Answer the question.

A. Once more the question asks me to make an assumption which is contrary to my own definition of the term "market."

By Mr. MacIntyre:

Q. I am asking you to take my definition there, and on the basis of the definition that I am giving there, for you to answer the question. Can't you do that?

A. I can't take two definitions of yours which flatly contradict each other, according to my knowledge of economic concepts and principle, the market at one place and the goods delivered at another place.

Q. I didn't say that he delivered the goods there. I said that he made what he called delivered price quotations and after he made those he made sales in a market at Conshohocken, Pa.

Mr. Stewart: Well, now, I ask that the question be read over again.

By Mr. MacIntyre:

Q. Didn't you understand that, Doctor?

5210 A. I am afraid that I didn't.

Mr. MacIntyre: Let us read the question again.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Now, you used a controversial word there. You used a term there about which there is controversy. One person thinks it means one thing and one thinks it means another. Now, before I direct him to answer, we will have to have a definition of the word "market" what you mean. He contends that it is one thing and you contend it is another.

Now, can't you ask your question and leave that term out?

Mr. MacIntyre: No, the question is meaningless unless I use the term "market" there because I think that the term "market" used there is in accordance with the evidence in this case.

Trial Examiner Norwood: This witness has testified that the market is where the place—where the goods are delivered.

Is that right?

The Witness: Yes.

Trial Examiner Norwood: Yes. Now, you are assuming—

Mr. MacIntyre: I think that the evidence in the

5211 case is to the opposite.

Trial Examiner Norwood: You are assuming that the market is at the mill and asking him to also assume that the goods are delivered somewhere else other than the market.

Mr. MacIntyre: I didn't say delivered somewhere else, if Your Honor please. I said that the sales took place, and I didn't say who delivered them where.

Trial Examiner Norwood: Now, if you can express that in something other than controversial terms there, or if you will define your term in connection with the ques-

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tion, I will instruct him to answer. Otherwise, I shall sustain the objection.

Mr. MacIntyre: Well, I can't take away all of the assumptions.

Trial Examiner Norwood: All right. Objection sustained.

Proceed.

By Mr. MacIntyre:

Q. Doctor, assume that the operator of a rigid steel conduit manufacturing plant, located at Conshohocken, Pa., quotes prices and makes sales to customers located in Philadelphia, and in the same point of time he quotes prices to customers of his in Altoona, Pa., and makes sales to them; that his quotations are delivered price quotations determined from a Pittsburgh base price, which is the
5212 same for each of the two quotations—or for the quotations to each group of those customers, but that the delivered price quotations are higher to the customers in Philadelphia than to Altoona; assume that on his shipments, after he has made sales, his mill nets are higher on his sales to his customers in Philadelphia than they are on his sales to his customers in Altoona.

Is there a discrimination in price, as you see it as an economist?

A. There is no necessary inference of discrimination.

Q. Well, can't you answer whether or not that you, as an economist, see discrimination there?

Trial Examiner Norwood: Is there possible discrimination?

A. Well, as I have said all the time, these hypotheses indicate a condition which might be discrimination, but they are not facts given to me from which I can determine that there was discrimination.

Q. And is that—

A. All I can say is that the hypotheses before me do not indicate a necessary inference that there is discrimination.

Q. And the additional necessary fact that you say that you need in order to answer that question would be to place all of those customers in the same town; is that correct?

A. Well, if you—if you place them in the same
5213 town then a good many of your other assumptions, of course, then, would disappear or have to be changed, so I think if you want to place them in the same town you had better ask another question starting at that.

Q. Well, is it possible for you to give an opinion here as an economist as to whether or not that there is a discrimination of price in any situation, without considering whether or not that the customers to whom the sales are made are in the same location?

A. Repeating again that this term "discrimination" is not a technical economic term, that I am using my best understanding,—

Trial Examiner Norwood: Yes.

Q. Yes.

A. I think that to state there was a condition of discrimination you would have to find the conditions otherwise the same for your customers, and that means in the same location. Now, location may not mean one particular square foot of land, of course. It may mean a considerable area which would be co-terminus with the market.

Q. Well, now, taking the assumptions that were made by Mr. Moore in his hypothetical question A, how far apart could the customers be in any particular area in that situation before you could determine—before you could fail to determine whether or not there is a discrimination in price between them?

5214 A. Of course that can't be answered in precise number of miles, but the point would be that these customers were in the same market, and they were buying in a market, and if some of them were getting identical goods from the same seller at a higher price than others, then we might say that there was price discrimination.

Q. Well, how near each other must they be, in your mind, before they can be considered as proper subjects of discrimination if different prices are made to them?

A. I think that is the question I just answered.

Q. No, you haven't answered that.

Mr. Robison: I submit he has, Mr. Examiner. He said that it could not be answered in terms of miles and it could only be answered in terms of a market. Now, if that isn't an answer, I don't know what counsel expects.

Trial Examiner Norwood: What is the last question?

(Question read.)

Trial Examiner Norwood: Can you add anything further to your previous answer on that?

The Witness: I can't think of it. I can repeat it, if you wish that. You can't—

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By Mr. MacIntyre:

Q. Let me ask another question. I don't want repetition.

Assume that the market, for the purposes of argument, is, as you have claimed them to be, at each of the
5215 destinations. Then what is the limit within which two or more of these customers must be with respect to any one of such destinations before you could determine whether or not there is any discrimination in sales between them?

A. They must be within one of these markets.

Q. Would that be within the city limits of one of these cities?

A. Not necessarily.

Q. Well, how far from the city limits must one be?

A. Well, I will get back to my previous answer. I can't tell how far it would be, so long as it was in the area which centered upon this market. As long as—

Trial Examiner Norwood: The area in which the same economic conditions prevailed; is that the—

The Witness: Not necessarily.

Trial Examiner Norwood: —the identical economic conditions prevailed?

The Witness: The area in which there was a market from which or at which these buyers bought the goods.

Trial Examiner Norwood: What determines the extent of the market?

The Witness: Well, a great variety of circumstances.

Trial Examiner Norwood: Well, what are they?

The Witness: The thick—thickness of the settle-
5216 ment of the region would be one thing. In a thickly settled region you are apt to have a good many markets; in a thinly settled region you are apt to have fewer markets as to area, and different conditions might very likely lead to different markets.

Trial Examiner Norwood: Would the similarity of the expression of supply and demand have anything to do with it?

The Witness: They might very likely. Because you might have one place where building operations were of a different sort than they were in another place, leading to different markets. Transportation facilities would be a very important factor governing the location of markets. In

general, markets are located by sellers in order to bring them into contact with buyers.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. That is, if the buyers are located sufficiently far apart as to cause a freight difference in the haul of conduit between the location of one and the location of another of, say, a fraction of a cent per 100 pounds; would that be sufficient separation of the buyers to prohibit you from saying whether or not there is a discrimination in prices that are made to them?

A. Well, that all turns on whether they are in the same market or not. If they are in the same market then the
5217 transportation cost, the freight cost, is the same for them all from any particular starting point.

Q. That is one of your tests of these markets or of the areas for which you claim to be markets; is that correct, as to whether the freight cost—

A. No.

Q. —to all in the market is the same?

A. No. I have never included that in my definition of "market."

Q. Well, can there be any differences in any one market, differences in freight cost in the delivery to one customer as against another?

A. Oh, yes, if the goods start from different places.

Q. Suppose goods started from a single place.

A. Then the market would be at which the goods were sold and at which the price were determined; would have a certain freight charge from this particular place to this particular market.

Q. In other words, there is a freight charge from the market where the goods are sold?

Mr. Robison: No, he didn't say so.

A. To the market I said.

By Mr. MacIntyre:

Q. There can't be any freight from a market after the goods are sold; is that correct?

5218 A. Oh, certainly. Any buyer can buy the goods and ship from where he chooses or any—

Q. Is it possible for a buyer to buy goods—is it possible, in an economic sense, for a buyer to buy goods in a market and to have the seller to transport them to some

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other place for the buyer and incur freight costs in that direction after the sale?

A. That—that would be possible for a buyer to contract to have goods delivered in a certain market and arrange with somebody, a seller, or somebody else, to ship them to some other place for a—for a payment.

Q. Does the market shift from the place where they were bought to the place where they were delivered under such circumstances as that?

A. Not in that case, if the price and the sale took place at the market and the seller simply performed the additional service of delivering some place for a cost—for a payment.

Q. Well, in that case, then, if the market didn't shift, that would be a freightless price; wouldn't it?

A. That would be the case of a freightless price. Let me make that perfectly clear. The price at the market plus the freight, the additional payment which the buyer made to get the goods sent somewhere else than the market, would make up a sum which would include price and freight, and the sum that he paid them would be freightless price in that sense; that is, just excluding
5219 the freight from the market to his place of location.

Of course, up to the market it is a price which includes freight, like any other price. You can—you can—

Trial Examiner Norwood: Price would not include any subsequent expense, freight?

The Witness: No. You can illustrate it by a department store, for instance, which sold goods to some of its customers and delivered them free to their places of location. The market is at the department store, and some of its customers living farther away might have an arrangement with the department store to deliver the goods to them, charging for the cost of delivery. They will pay them the price at the market plus the cost of delivery, but the market would be the department store, not the customer's residence.

Trial Examiner Norwood: We will have a ten minutes recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Doctor, is it your testimony that economists have not used the word "discrimination" with reference to

price to describe differences in price charged buyers who are located at different places, one, for example, in Chicago and another one in Philadelphia?

A. No, that was not my testimony. I said that
5220 I did not recognize the word "discrimination" as a technical term in economics, and I am certainly not prepared to say how all the different economists may have used that term. It is not like one of these recognized technical terms where one ought to know how the term is generally used.

Q. Well, is it your testimony that economists have not used that term to describe differences in price charged customers who are located in two different locations, for example, Philadelphia and Washington, D. C.?

A. No, that was not my testimony. My testimony had to do with how I would define certain situations put before me in terms of discrimination as I told you I was going to use the term.

Q. But you said you could not determine whether there is discrimination unless the buyers are located in the same place.

A. That was my testimony.

Q. Yes.

A. And by "located in the same place" I mean located in the same market.

Q. Is it your testimony that it is a principle of economic theory that two or more sellers with producing plants near each other will normally make sales to customers located nearer the plant of production and to customers located more distantly from such point of production
5221 with mill nets being secured from those nearby higher than is secured on the sales to those more distantly located and at the same time be passing up additional tonnage of business which could be sold to customers in the same nearby territory, so that some other producer or a number of producers located at a distant point could come in and get the business from those other nearby customers?

Mr. Robison: Well, now, Mr. Examiner, I think that in that question the meaning and intent of the phrase "so that" should be made plain, whether it is intended to indicate result or purpose.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Well, I will say "so as to permit," if that will explain it.

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Mr. Robison: I still think that in order that the question may be answered there must be an understanding as to whether that phrase is intended to indicate result or purpose.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Now, what did Mr. MacIntyre say about the term?

Mr. MacIntyre: I do not think I want to amend that at all, so I just ask the question to be answered as it was originally stated.

5222 Trial Examiner Norwood: You must state whether or not that phrase is one of purpose or merely indicative of results.

Mr. MacIntyre: I have used the language in that question importing as to whether it could be; that is, whether they did it so that that could be done.

Mr. Austin: That is purpose, then.

Mr. MacIntyre: No; whether it is—so that this follows.

Trial Examiner Norwood: The result would be—

Mr. MacIntyre: Brought about.

Trial Examiner Norwood: You may answer it from that standpoint.

The Witness: Could I hear the question read from that point "so that"—

Trial Examiner Norwood: It is not expressive of selling that way in order to produce that result, but it is sold in such a manner that the result follows.

Go ahead.

(Question read as follows:

"—so that some other producer or a number of producers located at a distant point could come in and get the business from those other nearby customers?")

The Witness: Well, when you asked if that was

5223 a principle of economics—

Mr. MacIntyre: Whether that is consistent with the principle of generally accepted and recognized economic theory.

Mr. Stewart: Now, what is consistent? I submit the question has been changed.

Trial Examiner Norwood: What was the original question there? How did it end up?

Mr. Robison: The question was stated at the beginning.

Trial Examiner Norwood: Read it from the start.

(Question read.)

Trial Examiner Norwood: Is that a normal procedure?

The Witness: Well, in the first place, I am asked if that is a statement of economic principle. Of course, economic principles are never stated in the form of that long—

Trial Examiner Norwood: Is it a recognized economic situation?

The Witness: If he means would that be in accordance with economic principles, I think that might under certain circumstances.

Trial Examiner Norwood: That might be a normal
5224 procedure?

The Witness: That might be a normal procedure.

By Mr. MacIntyre:

Q. Would it be a normal procedure for them to regularly do that under the assumption that I have stated for a long period of time?

A. I think it might.

Q. Is there any principle of economics which recognizes that a seller will attempt to secure all of the business in his most favorable market available to him there before attempting to secure business in a less favorable market?

A. No, there is no such economic principle. He may find it to his advantage to sell in a great number of markets, some more favorable, some less favorable, and he may not delay his entry into these other markets till he has sold all he can in the more favorable market.

Q. Well, would he continue letting other people come into his nearby market and take business, considering that nearby market is the more favorable one from the amount of revenue per unit received?

A. He might. Under certain conditions that might be the normal thing to do.

Q. Well, is it normal in accordance with the recognized economic theory for him to regularly do that in a fully competitive market?

5225 A. I think I have already answered that. Under certain circumstances it might be normal for him to do that.

Q. Is it normal for sellers located at two different producing points to dump merchandise, which is a standardized commodity, from each of their locations into each of the other locations regularly and over a long

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period of time without seeking to get all of the business near each of their plants before doing so?

Mr. Robison: Now, I object, unless it is made clear what is the intended meaning of the word "dump," and whether it is being used in a technical meaning or in the ordinary meaning of the man on the street.

Trial Examiner Norwood: I think it is used in economics. The Doctor understands what the term means, doesn't he?

Mr. MacIntyre: I assume that he knows.

Trial Examiner Norwood: Do you know what the meaning of "dumping" is?

The Witness: I can give a definition of it. I am not sure that that is what counsel has in mind.

Trial Examiner Norwood: Answer the question as you understand the term and counsel may question you further about it.

The Witness: As I understand, he is asking me whether it would be normal for two or more sellers
5226 to sell their products in relatively distant markets at prices which realized them lower mill net than they were realizing at nearer points.

That is a normal economic practice, resulting generally from a condition in which there is a considerable element of overhead cost in the total cost of production.

By Mr. MacIntyre:

Q. Isn't that dumping, Doctor?

A. Well, I said I would assume that that was the sense in which you were using the term "dumping" and was answering with that assumption.

Q. Well, isn't that the definition of the term "dumping" in the economic sense?

A. That term is used in a good many different senses.

Q. It is generally used in that sense, though, isn't it?

A. Well, it probably is used in that sense more often than others, but that is an estimate that I would not want to be held to.

Q. Now, let us assume that two manufacturers of a standardized commodity are located at point A, and that two others are located at point B, both points being separated by several hundred miles from each other, and that the manufacturers at each dump simultaneously and regularly over a period of time their merchandise into each other's locations and at prices that will net each

higher mill nets from their nearby customers than
5227 from the customers located in the location of the other manufacturer.

Is it your testimony, as an economist, that that is a normal competitive procedure for sellers in competitive markets?

A. Yes, that is, understanding by "normal" that it is a procedure which may develop out of natural causes in a competitive situation.

Q. That is, you as an economist would not expect the buyer normally to regularly attempt to secure all of the business possible for him to secure from his nearby customers, who give him the highest mill net returns; is that correct?

A. He might attempt to secure all he could to his advantage so as to give him in the long run the maximum profit with the minimum of loss, but certainly he would not refrain from selling in the more distant places just because he has not sold to every possible buyer in the nearby market, under competitive conditions.

Q. Would you please point out to me where there is any advantage to either of the dumpers in the situation that I have outlined to you where the dumping was reciprocal and done at prices which reflected identical delivered price quotations; that is, for all of the sellers in either of the two locations involved?

A. Each seller, having sold enough nearby to
5228 cover his fixed costs, may find that, instead of trying to sell more in the nearby places by reducing his price, he can do better by going out to other places, where he can sell at a lower price, because the fixed costs are already covered, and so as a result receiving these different mill nets.

Now, of course, there are other reasons, to which I have already testified, why sellers like to spread their business over a large area and a large number of markets, and not have it confined to one or a few markets within a narrow area, and all of those reasons, which I think I need not repeat, lead any competitor,—or it may naturally lead any competitor to reach out into distant markets, and while one competitor is doing that some other competitor is reaching out toward him, and so they may tend to overlap in their reaching, and each one of them regards it as to his advantage to do so.

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Q. Is there any advantage to a buyer in either one of those locations to have six quotations, delivered price quotations, that are identical made to him, instead of two, that is, with reference to price?

A. Well, the advantage is that in general the more sellers there are to whom a buyer can resort the greater is the competition, and the more the competition the more likely is it that the buyer's advantage will be served.

Q. Well, if the sellers involved are six in number, and all of them quote him the identical price, delivered
5229 price, of $2, does the buyer get any advantage with reference to price out of that than he would have received if there were only two which quoted him the $2 price?

A. It may well be that the presence of those six made the competition so active that there was a price of $2; whereas if there had been only two, with less active competition, the price might have been higher.

Q. Well, I am assuming, though, that the price is $2 whether it is quoted by two or whether it is quoted by six.

A. Yes, but I am—

Q. Now, does the buyer in either situation get any advantage over the other situation—

A. You have asked me—

Q. —with reference to price?

A. —if he gets any advantage by reason of six instead of two sellers in his market.

My answer is that that has likely resulted in a lower price than he would have had if there had been only two.

Q. Well, let us assume, though, that the price would be $2 whether two quoted or whether six quoted. You are assuming that when six came in that the price came to $2 from something else. I am assuming that it was $2 when two quoted, and it remains $2 after six quoted. Now, has he received any advantage by virtue of the six coming
5230 in, instead of the two, with reference to price?

A. Well, let me correct one of your statements as to what I was assuming. I was not assuming anything. I was simply, in answer to your question, stating an economic principle, and, according to that principle, I was not assuming, again, that first there was a price of $2 when there were two and later on the price less than $2 when there were six.

Q. Well, I am assuming that.

The Witness: Can I finish my answer, Your Honor?

Trial Examiner Norwood: Let him finish.

A. (Continuing.) What I was saying was that if at any given time there were either two or six, it is likely, according to economic principles, that the price might be lower with the six than with the two.

By Mr. MacIntyre:

Q. Well, now, let us add to that assumption that when the six came in the price was still $2, just as it had been when there were two. Has the buyer, with reference to price, gained any advantage?

A. Well, you have made an assumption which is contrary to the economic principle which I have announced. Now—

Q. I am trying to make that in accordance with the facts in this case, Doctor, so will you answer the question in accordance with the facts that I have assumed.

A. I am not objecting to your assumption; I am 5231 just making my answer.

Now, that assumption I say, according to the economic principle that I have announced, would be rather less likely than that the price would fall when a number of competitors came in. If it did not, then all we can say is that, so far as that goes, the buyers have not yet had an advantage.

Q. That is, they do not gain an advantage by virtue of the fact that there is a great number of sellers?

A. No, I do not say that; but just on the assumption you made, that here is a price of $2, the change of the number of sellers, the price still being $2, obviously the buyers have not yet gotten the advantage through the lowering of the price; but I must add that if those six sellers had not come in, and the competition had been left to two sellers, very likely the price, instead of being $2, would have been higher.

Q. I am not asking you to speculate; I am asking you to assume that the facts are as I have stated them, that the price did not change, then the buyer does not get any advantage?

A. My answer was on that assumption.

Q. He does not get any advantage?

A. Only as I have stated it. The buyer is not actually

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getting a lower price. But you can't say, since you don't know what the price would have been if the number
5232 of sellers had been different, that the buyer is not better off on account of the larger number of sellers. You see, when we compare two points of time we have got to specify our circumstances under each of those positions. In other words, to make it still clearer—

Trial Examiner Norwood: I think you have made that clear.

Go ahead.

By Mr. MacIntyre:

Q. Now, with reference to this question of a uniform f.o.b. mill price, is it your testimony, as an economist, that there is no economic pressure upon a seller who quotes a uniform f.o.b. mill price to his customers in the area at and around his mill if other sellers do the same at other locations and continue to try to increase the area of their sales in the direction of this first seller's mill?

A. That is, they are all using the uniform f.o.b. mill base.

Q. Yes, but each is trying to increase his territory of sales to and including the location of the mill of the other seller.

A. Yes, and the only way they can do is by reducing the—

Q. Uniform f.o.b. mill price?

A. —uniform f.o.b. mill price at their particular mill.

Q. And if they do that, is it your testimony that
5233 there is not economic pressure in the form of price competition upon each and every one of them?

A. No, I would not say that.

Q. Well, is there economic pressure in the form of price competition upon each if they did that?

A. Yes, there is price competition.

Q. And if they did that then there would be no monopoly in the hands and within the control of either, except in so far as one would be able to outdo the other in price competition, would there?

A. Well, under those circumstances each mill would have a monopoly for that territory surrounding its location in which no other competitor has been able to sell, and it would be far more secure in that position of monopoly than under some other selling system, such as the bas-

ing-point system, for reasons which I have already stated, namely, the only way that the competitors could invade his territory would be to lower their uniform mill prices at their base, and so suffer a loss of price on all of their sales. In other words, in order to invade a certain locality within the first mill's territory the invading competitor would have to suffer a loss on all of its business everywhere. Now, that means that the monopoly position which any mill has right about its own territory, where it is not being invaded, is much more securely protected
5234 under a uniform f.o.b. price basis than under other pricing methods.

Q. But he is protected there only by virtue of the fact that he is economically able to produce and sell at a price —not only economically able to produce and sell, but does produce and sell at a lower price than his competitors are willing to come in and sell.

A. Yes.

Q. That is the only thing that gives him any monopoly, isn't it?

A. Well, that is just another way of stating it.

Q. But isn't that the only thing that gives him the monopoly there if the others are seeking to come in?

A. Yes. His monopoly is due to the fact that within a certain territory, which may be subject to variation as to its area, he is able to sell at the lowest price.

Q. And if he is so selling at the lowest possible obtainable price, based on cost of production plus whatever all of the sellers combined are willing to take in addition to the cost of production, is he then getting anything more or less than he would under a higher price than that quoted by all on a delivered price basis?

A. Well, in my previous answer when I stated the "lowest price" I used the term in the sense in which I think you did in the question, namely, lowest as among the different competitors. Now, you are using the term
5235 "lowest price" as the lowest price that he could charge and still cover his cost. I do not think that there is anything in this to compel him to do that.

Q. Well, when within any area a seller has reduced his price to a point where it just covers his cost, has the buyer there secured the lowest possible price, except in so far as someone else, someone located at some other point,

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has a lower price than the local man and is willing to come in and sell at his lower cost?

A. If buyers are getting the goods at the lowest possible price at which they can be produced for delivery in that market, I should say buyers are doing pretty well.

Q. If they are doing that under a uniform f.o.b. mill system, then they would not gain anything if they lost that sort of a system and the sellers went back to a basing-point system, would they?

A. Well, in the first place, I testified that I do not think they would get that advantage under the uniform f.o.b. basis.

Q. Well, I am assuming that they would get that advantage, and I am asking you if they did would they then get any advantage by going back to a basing-point system of pricing.

Mr. Austin: If Your Honor please, I would request counsel for the Commission to let the witness answer questions, and not continually interrupt him, as he has been doing today.

5236 Mr. MacIntyre: I do not want the witness to sit here and discourse for half an hour. After he has finished the answer I want to follow with another question. We are taking up too much time.

Trial Examiner Norwood: The counsel's comment has been very helpful, but I do not think I need any more of it. Go ahead.

The Witness: Could I hear that question read?

Trial Examiner Norwood: Read it.

(Question read.)

A. Yes, they might get a very definite advantage if going back to that other system increased the competition in their particular location.

By Mr. MacIntyre:

Q. Could it increase the competition so as to give a lower price over any substantial period of time if under the uniform f.o.b. mill system the buyer was already getting the lowest possible price based on cost and one that just covered cost?

A. Well, that is a very highly artificial assumption.

Q. Well, I am assuming that.

A. Lowest possible price—

Q. Yes, based on cost.

Trial Examiner Norwood: If you assume that, could anything be any better?

5237 The Witness: That is what I was going to say. If you assume that the buyers are already getting the lowest possible price, of course they can't do any better, unless you bring a philanthropist in who sells them at less than cost.

By Mr. MacIntyre:

Q. In other words, if they were getting that under a uniform f.o.b. mill system as a result of any competitive force, then they would not gain any advantage if they went back to a basing-point system and had a hundred prices.

A. Nothing could be done to make them any better if they were getting the lowest possible price. But the point I want to make is that, in the first place, lowest cost of the present buyers in the market is not necessarily the best—lowest cost of the present sellers in the market is not necessarily the best that the buyers can do. Perhaps those sellers will be more efficient if they are prodded on by competition.

Q. And suppose that it is the lowest cost, or that the price is at the level of the cost of the lowest cost producer who could possibly enter the market?

A. Well, you again set up a position—an assumption—

Q. Yes.

A. —in which there is no possibility of doing any better.

Q. Whether it would be by a basing-point system or anything else, he could not do any better than that, could he?

A. Starting with the assumption that the buyer
5238 is getting this good at the lowest possible price that these sellers, or any other sellers, could possibly deliver it under any other circumstances, I do not see how you could change the selling system and make it any better than that.

Q. And it could not make it any better even if a basing-point system were brought in and he got a hundred price quotations?

A. It would probably be no lower than before, and it wouldn't do any good.

Trial Examiner Norwood: Well, if it got down to that point, wouldn't the prices be uniform?

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The Witness: It is very hard, Your Honor, for me to assume an artificial position like that.

Mr. Stewart: Off the record.

(Remarks off the record.)

Trial Examiner Norwood: Proceed. Go ahead.

By Mr. MacIntyre:

Q. Doctor, have you ever examined the evidence pertaining to any industry which is using the basing-point system of delivered price quotations for the purpose of determining whether the operators who use that system engage in collusion?

Mr. Stewart: I object.

Q. Or adopted it without collusion?

Mr. Stewart: I object on the ground that, unless
5239 the counsel specifies that what he means by "evidence"—does he mean evidence of record, or has he examined an industry?

Trial Examiner Norwood: I think he can ask him about any evidence in the world.

Mr. Stewart: Well, what evidence, may I inquire?

Trial Examiner Norwood: Well, we will find that out later.

Answer the question.

Objection overruled.

Has he ever at any time examined any evidence?

Mr. Stewart: Well, do you mean recorded evidence or evidence generally?

Trial Examiner Norwood: Anything that is evidence. I think the Doctor understands.

Go ahead.

A. I have read some records of proceedings before this Commission in which the basing-point system was the issue. However, I do not believe that I can say that I read enough of the evidence in such case to warrant my rendering a verdict as to whether collusion was being employed or not.

By Mr. MacIntyre:

Q. Or as to whether collusion had been employed in the adoption of the system; is that correct?

A. No; I am not competent on the basis of evidence to settle that question.

5240 Q. And have you with respect to any industry examined evidence concerning the adoption of the

basing-point system in such industry, and the maintenance of it, to satisfy you as to whether or not there was collusion in the adoption or the maintenance of it?

Mr. Stewart: I object to that on the ground that it is not proper cross-examination. It is immaterial, in any event, as to whether the Doctor thought or did not think there was collusion.

Trial Examiner Norwood: Overruled.

Mr. Stewart: Let me add the further objection that the question of collusion is a legal question, and the Doctor is not qualified to answer it.

Trial Examiner Norwood: The doctor has answered on a certain set of facts whether it indicated collusion to him.

Mr. Stewart: Yes, but this question goes entirely outside that question.

Trial Examiner Norwood: He has a right to find out how much he knows about that matter.

Mr. Stewart: The question was asked in our case as to whether as a matter of economics, not a legal conclusion.

Trial Examiner Norwood: Objection overruled.

A. Well, the difference between this question and that which I answered is that before, I took certain assumed facts and from them stated whether in my opinion
5241 they set up an inference of collusion, or what it might be. Now, I am asked if I know, myself, from the state of the evidence enough about the facts to know as a matter of fact whether collusion was present or not. I can't testify as I do.

By Mr. MacIntyre:

Q. And can you testify from any knowledge that you have as to whether or not that collusion or agreement was used in any industry which now uses the basing-point system, or which has ever used the basing-point system, in its adoption or in its maintenance?

A. No, I am not prepared to testify to that. It is a question of fact.

Q. How, then, have you been able to testify here that any use of a basing-point system by any industry would be a natural and logical development?

A. Well, my answers were definitely limited to certain assumed statements of fact that were put before me, and I was not asked to tell whether under certain actual,

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historical facts collusion had or had not been practiced. I was merely asked to testify whether under the assumed facts put before me an inference of collusion would be present, or in other questions it was asked whether the facts put before me could have resulted from natural economic causes.

Q. Well, if you never saw a basing-point system, or never knew of a basing-point system being in opera-
5242 tion, which you could point to and say that it arose without agreements or collusion, then how can you testify here that it would be possible for any such system to arise and be maintained without collusion or agreements?

A. I think I would have to repeat my same answer, that they are two entirely different questions.

Trial Examiner Norwood: Well, in some measure you related your experience to your knowledge of economic principles in making that answer as to whether or not those circumstances indicated collusion to you, did you not?

The Witness: I undertook, Your Honor, to make my answers based, so far as facts were, based solely on the facts put before me in the hypothetical questions. Now, I did not bring into my answers facts resulting from my experience.

Trial Examiner Norwood: And your experience would indicate to you what is meant by the term "collusion."

The Witness: Oh, yes, I brought in my knowledge of economic terms and principles.

Even there I would not be competent to give a legal definition of "collusion." I assume that in all of my testimony I was not talking about legal collusion, but about collusion in the ordinary sense of that term.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. But when you stated that you did not con-
5243 sider that what Mr. Moore put to you in his hypothetical questions as a condition necessarily involving agreements, collusion, and understandings on the part of the rigid steel conduit manufacturers, or that the basing-point system which they were using could have arisen without agreements, understandings, or collusion, you were not drawing upon any knowledge of yours as to whether

or not that any basing-point system had ever come into existence in the absence of agreements, understandings, and collusion, were you?

Mr. MacIntyre: May I have that question, please?

Trial Examiner Norwood: Read it.

(Question read as follows:

"Q. But when you stated that you did not consider that what Mr. Moore put to you in his hypothetical questions as a condition necessarily involving agreements, collusion, and understandings"—)

Mr. Stewart: Mr. Moore never put any such statement in his question.

Trial Examiner Norwood: Wait a minute. Let him finish read the question.

Mr. Stewart: That is as far as I want to go to object.

Trial Examiner Norwood: Finish the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

5244 Mr. Stewart: I object on the ground that the question assumes and misstates the question which was asked by Mr. Moore. He never stated there were any such conditions in his question.

Trial Examiner Norwood: I think he did.

Mr. Moore: I beg your pardon, Your Honor. I did.

(Remarks off the record.)

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. Well, I drew upon other knowledge of mine so far as the knowledge of economic principles is concerned, but I did not draw upon any other knowledge of mine as to the facts in this industry or any other basing-point industry, but confined myself to the facts in the hypothetical question.

By Mr. MacIntyre:

Q. In fact, you had no knowledge as to any other basing-point system coming into existence and the conditions under which it come into existence, that is, as to whether it came in by agreements, understandings, or collusion; is that correct?

Mr. Robison: I think he has already answered, Mr. Examiner. I object to the repetition of the same question.

Trial Examiner Norwood: Objection overruled.

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Answer the question.

The Witness: I think I already answered that.

5245 Trial Examiner Norwood: Answer it again.

A. The answer is that I had some scattering knowledge. I never had enough knowledge to have formed a judgment as to the points in the rest of this question, as to whether collusion actually was present or was a factor in the development of the basing-point system.

By Mr. MacIntyre:

Q. Of any basing-point system; is that correct?

A. Yes.

Trial Examiner Norwood: Five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Doctor, I am showing you your testimony appearing at page 4879, between lines 12 and 20, concerning cost of production (handing record to the witness).

A. (After examining record.) Yes.

Q. Is it your testimony that it is a part of generally recognized and accepted economic theory that a profit in the form of a return on the invested capital should be considered as a part of the cost of production?

A. Well, I have to start my answer by recognizing that there is some difference in usage in the definition of the term "profit." As I use that term I do not include in that a normal return of interest on the invested

5246 capital. I call that interest. Profit is a residue left to the entrepreneur after interest and rent have been distributed and, of course, the other costs provided for.

Q. You would consider, then, that any profit that he would make on his invested capital which he as an owner had invested, up to the level of prevailing interest rates on capital in his location, should be considered as a part of cost of production?

A. Part of cost of production in this broad general sense which we are using.

Q. Yes, and as you used it on the page that I called to your attention.

A. I want to remind you that this question used the term "profit."

I am perfectly ready for the purpose of the answer

to accept your definition of "profit," which is different from the one which I myself have used.

Q. In other words, any return upon invested capital, that is, capital invested by the owner of a manufacturing plant up to the level of the normal rate of interest on invested capital prevailing in his locality would not be considered by you as being profit, in the broad sense?

A. That is correct, except for one little exception, that it would not be measured by the prevailing market rate of interest, because that itself is higher on account
5247 of risk, and profit is the return for taking risk. If I might be permitted to modify your statement by simply saying the riskless rate of interest, or the rate of pure interest, because beyond that the market rate of interest may include an element of profit, with that modification I accept that statement.

Q. You teach taxation in your classes, do you, Doctor?

A. Yes.

5248 By Mr. MacIntyre:

Q. Dr. Fairchild, is it your testimony that it is a principle—that it is a generally recognized and accepted principle of economic theory that bids and offers of sellers in a free and fully competitive market will not only tend to become uniform, but will, in fact, become absolutely and identically uniform for all sellers and remain so at rigid levels for periods of from one month to one year without change?

A. Oh, no, that is not a correct statement of economic principle.

Q. Is there anything in economic theory that would support that statement?

A. Not that statement that those things will happen. The economic principle that they might happen is another matter.

5249 Q. Is there anything in generally accepted and recognized economic theory that would say that such might happen?

A. Why, the principles of economics are not descriptions of particular market conditions such as your question contains. They are statements of principles, the relations of cause and effect between phenomena. Now, those principles of economics we apply to particular cases and determine on the basis of those principles what conclu-

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sion we shall make as to the particular case. Now, in that sense there are, I think, principles of economics which would indicate that the condition you heave described might take place, but here again I must make a modification. You speak of the bids and offers becoming—becoming identical. Now, in certain markets that would happen and others it would not happen, but that it might sometimes happen and the price remain fixed for a considerable period of time is in harmony, I think, with recognized economic principles.

Q. Well, is it accepted economic theory generally that such a situation as I heave just outlined would be normal in a fully competitive market?

A. I think it might be normal in a fully competitive market.

Q. Well, is it a part of generally accepted economic theory that bids and offers of sellers in a free and fully competitive market will not only tend to become uniform, but will be absolutely and identically the same for all
5250 sellers and remain so at rigid levels for periods of from one month to one year or more?

Mr. Robison: That is the same question that was answered before, and I submit the witness has fully answered it. I object to the repetition of it.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: Without change.

Trial Examiner Norwood: Objection is overruled.

Answer the question.

A. I see Mr. MacIntyre's point. I carelessly expressed my opinion instead of putting it in the form in which his question called for, namely, that there are general accepted economic principles in accordance with which this condition might occur.

By Mr. MacIntyre:

Q. Well, is there any statement of any economic theory such as I have just stated?

A. That, I think, calls for just a repetition of my last answer.

Q. Isn't it a fact, Dr. Fairchild, that economic theory, relating to the principle of uniformity of price in a market, a competitive market, doesn't relate at all to bids and offers but to prices which are involved in transactions in a market—

5251 A. Well, these—

Q. —in the buying and selling?

A. These economic principles relate to both, both to the prices and to the bids and offers. That is why in my first answer I made a distinction there between the prices and the bids and offers. The bids and offers will be more likely to be off the market price than—than the price itself, but economic principles deal with both bids and offers and prices.

Q. Well, if that economic principle deals with both prices paid in buying and selling transactions—buying and selling transactions in a market and also to bids and offers, how can you explain that wheat price in the Chicago Grain Exchange for a particular grade as of a particular point of time is practically uniform on several transactions, but that bids and offers vary widely above and below that price?

A. Well, that—a full explanation of that would perhaps have to come from someone more technically competent than I in the field of the speculative grain markets, but I think a broad answer in terms of economic principles is simple. In the Grain Exchange you have a speculative market, bids and offers being made almost continuously and all the time. There is a certain price which will be determined as the result of demand and supply in that market.

When a buyer comes in and offers to buy at a price
5252 less than the prevailing market price he is—his offer may not be taken up by anybody. When a seller comes in and offers to sell at a higher price than the market, there may be nobody there to take up his offer, and so these bids and offers can be going on more or less continuously, and only those bids and offers which bring two people together willing to make a transaction affect the price. As soon as that transaction is made, then you get the market price for that—that moment, and the ticker records it. That is the market price. Later on a couple of other parties, one a buyer and one a seller, come together with bids and offers which permit a transaction, and so the thing goes. That, I recognize, is not a highly technical discussion of a market, but perhaps is adequate to answer your question.

Q. Isn't it a fact that economists generally, when explaining uniformity of price in a competitive market, point to the prices involved in transactions in buying and selling wheat on the Chicago Grain Exchange as a good example?

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A. As a good example of what we have called—

Q. Well, don't they generally use it as an example, that is, economists?

A. They generally use it as an example of pure competition, and some of the—this is going over old ground perhaps, but some of the early economists, before we made this distinction to which I have referred, were content
5253 to use it just as an example of competitive price in general. They didn't say, "This is the only price condition," but here we have about the simplest example of the operation of competition, and the textbook writers naturally pick it as their—their illustration.

Q. And when they are referring to the uniformity of price in a market and—they are not referring to bids and offers but to the paid prices in transactions; is that correct?

A. Well, if they say "price" of course they are referring to—

Q. To prices?

A. —to prices.

Q. They are not referring to bids and offers; are they?

A. No. They frequently refer to bids and offers, but if so they call them that.

Q. But they do not refer to bids and offers in such a market in giving it as an example of the economic principle of the uniformity of price in a competitive market; do they?

A. Oh, they might, just as I have, myself, undertaken to explain the wheat market by talking about the bids and offers and the resulting prices.

Q. How can they point to uniformity, that is, to bid and offer quotations in the Chicago Grain Exchange, which vary and are not uniform, as an example of uniformity of price in a market?

5254 A. Just as I did myself a moment ago. If they are describing a market which arrives at uniform prices, I should think in describing the wheat market they would talk about bids and offers. They don't necessarily imply that the bids and offers are all uniform. They are arriving at—they are describing the process by which a price for wheat is arrived at.

Q. Have you ever noted that anyone in that connection has ever said that bids and offers of sellers in such a market not only tend to, but become uniform and will be absolutely and identically uniform the same for all sellers and

remain so at rigid levels for periods of from one month to one year or more without change?

A. No, I have not, and would naturally not expect anyone to say that describing the wheat market, which is a certain type of competitive market, what we call pure competition.

Q. There are quite a number of manufactured goods that you would not expect any economist to apply such a statement as that to; isn't that true?

A. Statement as what, may I ask?

Q. That is, that the bids and offers of all sellers in the competitive market in the sale of manufactured goods would not only tend to, but become absolutely uniform and identical for all sellers and remain so at rigid levels for periods of from one month to one year or more without change?

A. Oh, there is a great variety of marketing condi-
5255 tions and selling practices in different industries, and a result which might occur in one might not occur in another.

Q. But there are a number of manufactured goods to which that statement would never be applied by economists; isn't that correct?

A. Well, the economist—at least I as an economist—isn't generally describing market conditions in connection with this discussion of the theory of price. He will pick out a certain market and use it as an illustration. So that it isn't likely that, having picked his wheat market as the best illustration of this type of competitive market—I think you will very seldom find an economist also picking out some other, although he might. I wouldn't be able to answer for all the economists in the world as to that.

Q. Well, do you know of any economist who has pointed out to a homogeneous or standard manufactured article and made such statements as the one that I have just read?

A. I couldn't say so offhand without looking the matter up.

Q. Well, will you please look the matter up and if you can find where any economist has ever stated with respect to any manufactured homogeneous standardized product that bids and offers of sellers in a free and fully competitive market will not only tend to become uniform, but will be absolutely and identically the same for all sellers and remain so at rigid levels for periods of from one month

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5256 to one year or more without change and submit it to us—or to me?

5258 A. I can say, Your Honor, that you won't find any economist who has made that statement. Economists don't make statements like that. What you would find is that plenty of economists have stated economic principles of price and marketing which you could apply to certain manufacturing situations and determine whether or not in those particular situations, under these statements of principle, it would be natural or normal for bids and offers to become the same and remain the same for considerable times.

Now, that is the only thing I could possibly find. I can't find any economist who will give me a quotation which, set beside the one in this question, would be the same. They just don't write it that way.

By Mr. MacIntyre:

Q. In other words, it is now your testimony that wherever that it could be taken to mean that prices behave in the manner in which—that is, that sellers behave in the manner in which that statement indicates, that you have merely drawn upon some statements in economic theory which you, as an individual economist, conclude and express as your opinion as permitting you to so state here?

A. Well, if I understand the meaning of that question, here is the answer: I haven't testified to what seems to be included in that question. I was presented with a hypothetical statement of facts. I was asked to testify

5259 whether, in my opinion as an economist—and applying my knowledge of economic principles—those facts could result, without combination or collusion, or result from the operation of natural sources—natural causes. I answered the question from that point of view. I haven't testified as to a lot of other conditions.

Q. Is it your understanding from all of the hypotheses that have been put to you by Mr. Moore, that sellers in the rigid steel conduit industry do not behave in the manner in which that statement of mine indicates?

A. As a matter of fact, you mean?

Q. Yes.

A. I haven't been testifying as to matters of fact.

Q. No, but did you understand any hypothesis that he put to you to mean that sellers of rigid steel conduit in making bids and offers in a fully and—in a free and fully competitive market do not only tend to have them become

uniform, but that they make them absolutely and identically uniform for all of the sellers, and that such quotations remain so at rigid levels for periods of from one month to one year or more without change?

Mr. Stewart: Now, just a moment. The question asked: Did the sellers behave? and what he really means is "Do the prices behave?" Your question doesn't make sense, I submit.

5260 Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Answer it.

A. Now, the best way to tell what I understood about the statement put before me, I should think, is to refer to the record and read the statement. The statement was perfectly clear, I thought, and I believe I understood it just as I read—

Trial Examiner Norwood: Can't you tell us what you understood, now, when you answered that question with regard to these particular points regarding this industry?

The Witness: Well, I haven't that statement before me in its exact wording.

Trial Examiner Norwood: Did you have that concept? Was that in the concept that you had obtained at the time when you said that it was a competitive set-up?

The Witness: Well, as I recall, I was given a hypothetical statement referring to a certain uniformity of prices over a considerable period of time and I testified that, in my opinion, that situation could arise without collusion or combination. I am depending on my memory now.

Trial Examiner Norwood: When you did so, did you have that other concept in there of rigidity or whatever counsel stated to you? Did you have that in mind?

The Witness: He has got a statement that is quite 5261 different from the hypothetical statement before me.

Trial Examiner Norwood: Will you please answer my question? Did you have that in mind, or did you not?

The Witness: I had in mind the statement that was before me, not the statement that was in this question.

Trial Examiner Norwood: Well, did you have this one in mind? State whether you did or not.

The Witness: I did not have in mind the statement in this question.

Trial Examiner Norwood: Well,—

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By Mr. MacIntyre:

Q. Did you have in mind anything as a condition existing in the rigid steel conduit industry equivalent to this which I have just read you?

A. What was given to me was not a statement of fact in any industry, but a hypothetical statement, as I took it, and I was asked to express an economic opinion with regard to those hypothetical facts.

Q. Well, I will put a hypothesis to you now, Doctor.

Assume that bids and offers of sellers in a free and fully competitive market—oh, strike that.

Assume that rigid steel conduit manufacturers as sellers not only make price quotations which tend to become uniform, but which are, in fact, absolutely and identically the same for all sellers and remain so at rigid levels
5262 for periods of from one month to one year or more without change. Now, does that hypothesis present to you a situation which is the same as the situation presented to you by Mr. Moore in his hypothetical questions to you?

A. Not quite. I wish I could refer to his statement to refresh my memory.

Mr. Moore: You may, certainly (handing document to witness).

Trial Examiner Norwood: Well, if those conditions had been added in hypothetical question A, would your answer have been the same?

Now, listen, Doctor, answer my question here.

Read it to him.

(Question read:)

The Witness: Well, it is conceivable that that condition might have arisen under free competition. In that respect my answer would be the same. Of course, I might add that here is a supposition laid down which seems to me rather improbable.

Trial Examiner Norwood: Well, you weren't asked about that.

By Mr. MacIntyre:

Q. Is it your testimony that the situation such as I have put to you in my hypothesis, is normal in a competitive market in the sale of a homogeneous and standardized
5263 manufactured product?

A. Well, "normal" means something else. "Normal" means "is in normal occurrence, regular occurrence."

Going on right along. That is different from testifying that this condition might on some occasion have arisen under competitive conditions.

Q. Well, in the light of your explanation of your understanding of my question, then, will you answer the question?

A. While still arising from normal or natural conditions, it might be an unusual situation.

Q. Well, is it a part of economic theory that it is normally expected to exist and be carried on?

A. Well, I think that is the same answer. Economic theory doesn't say just that thing exists. Again I repeat it, it lays down certain fundamental principles, and I would think that such a condition as that might conceivably exist without collusion, but when you ask if it is normal, that means is it customary, the generally prevailing condition right along? Then the answer might be in the negative.

Q. You consider that that is fully consistent with competition; that is, perfect competition?

A. I think such a condition might arise and be consistent with it. No, not perfect competition; with competition.

Q. Well, what kind of competition would that be consistent with if it isn't consistent with perfect competition?

5264 Mr. Stewart: As I understand it, Mr. Examiner, that term has not been defined to date, so that I object on the ground that, not knowing what "perfect competition" is, the question can't be answered.

Trial Examiner Norwood: Objection is overruled.

Mr. Stewart: I thought the Examiner ruled recently that you didn't know what perfect competition was yourself.

Trial Examiner Norwood: The witness has used this here, and we are in a fair way of finding out what it is.

Mr. Moore: No; this witness has not used the term "perfect competition." It was used by Mr. MacIntyre.

Trial Examiner Norwood: Read that last answer.

(Answer read.)

Trial Examiner Norwood: He did use the term "perfect competition."

Mr. MacIntyre: Read the pending question now.

Mr. Stewart: Because it was in the question.

Trial Examiner Norwood: The objection is overruled.

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Mr. MacIntyre: What is the pending question now? Read that to the witness.

Trial Examiner Norwood: Read the question.

(Question read.)

A. It is consistent with what I have defined as imperfect competition which, if I may try to make myself—

Trial Examiner Norwood: Would you mind defin-
5265 ing it again?

The Witness: No, I don't think I need to define it again.

Trial Examiner Norwood: I say, would you?

The Witness: Yes.

Trial Examiner Norwood: Define "perfect competition" and then we will assume that imperfect competition is something that is different than that.

Mr. Moore: No; I object to that. You can't do that, say that imperfect competition is something that is different from perfect competition—

Trial Examiner Norwood: You object to that, do you?

Mr. Moore: —with any meaning whatever. You can define both and let the meaning be determined from the difference.

Trial Examiner Norwood: I will overrule the objection. Define "perfect competition."

The Witness: You realize, Mr. Examiner, that there is difference among economists in the usage of this.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

The Witness: Perfect competition is a highly artificial abstraction which is useful for mathematical economics. It implies that the number of sellers is infinite, that
5266 each seller sells an infinitesimal part of the product, that sellers and buyers are infinitely informed about all conditions, and that—well, I think that is the definition.

By Mr. MacIntyre:

Q. Now, Doctor, this application of the principles of economic theory concerning uniformity of price in a market, about which you have been testifying, is used by economists to describe an element in a market under perfect competition; isn't it?

A. No. It is used to describe a market under the various kinds of competition. It is by no means limited to perfect competition. The discussion—

Q. In other words, the uniformity of price in a market

would exist under a monopoly as well as a market of perfect competition; is that correct?

A. Yes. At any given moment in any given market you can have only one price, even if there is a monopoly.

Mr. MacIntyre: I ask that we adjourn until tomorrow morning.

Mr. Moore: May I ask, however, before you do adjourn, Mr. Examiner, how long Mr. MacIntyre expects to go on? I ask because—

Trial Examiner Norwood: Well, we have been expecting to quit most any minute here.

Mr. Moore: —we have very few questions to ask
5267 Professor Fairchild. I hate to hold him over here tonight for just a matter of five minutes or so examination.

Trial Examiner Norwood: What do you say to that, Mr. MacIntyre?

Mr. MacIntyre: Well, I had in mind some further questions.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Redirect. Go ahead.

Redirect Examination by Mr. Robison.

Q. Professor Fairchild, at the opening of the hearing this morning you requested of the Examiner the privilege to complete and supplement your answer to one or more questions which had been asked you yesterday.

I ask you now to indicate what the questions were to which you referred and to supplement your answers in such way as you think proper.

A. The question or questions—I don't recall whether it was one or several—it makes no difference—related to my conferences with other economists before taking the witness stand. I interpreted that, perhaps mistakenly, as referring to meetings which I had myself arranged with other economists for consultation, and in that interpretation I omitted a mention of a meeting which counsel had ar-
5268 ranged in New York in the last week of December which I attended. Since that conference was attended also by other economists, it now occurs to me that perhaps I should have mentioned that in my answer to that question.

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Q. And will you name the other economists who were present at that conference?

A. Professor Griffin, of the University of Michigan; Professor Vaile, of the University of Minnesota; Professor Vanderblue, of Northwestern University; Professor Wernette, of Harvard, and—

Q. You have already mentioned Dr. Copeland?

A. I have already mentioned Dr. Copeland, who was also in that conference.

Mr. Moore: And at that conference I was present with two of my associates.

Mr. Robison: That is a question?

Mr. Moore: I was simply stating that for the record.

Trial Examiner Norwood: Statement of counsel, yes.

Mr. Moore: I understood that we were required to state all of the persons. Mr. Gilpatric and Mr. Robison were present also with me.

Trial Examiner Norwood: Go ahead.

Mr. Moore: Now, if I may ask just two questions—

Trial Examiner Norwood: Go ahead.

5269 By Mr. Moore:

Q. Professor, how would cost be affected in any way if uniform f.o.b. mill prices were used?

A. Cost would be increased because the use of uniform f.o.b. mill prices would prevent the different sellers moving out widely into other territories. It would greatly restrict their use of sales organizations. It would prevent them developing the large enterprise which might give the advantage of large scale production, and all of those things when used are—tend to be cost-reducing factors. And so the use of the uniform f.o.b. mill prices basis would tend to prevent the use by sellers of various devices which they might otherwise use in order to improve their technical operations and reduce their costs.

Q. Now, in answering any of the questions which I asked of you when you were on the witness stand on Tuesday and Wednesday, the answers to which were based on facts or some of the facts assumed in hypothetical question A, did you take into consideration any facts regarding the rigid steel conduit industry which were not set forth in such hypothetical question?

A. No, sir. I undertook to answer those questions

strictly with reference to the facts and only the facts stated in the hypothetical question.

Q. Would any of your answers to questions which
5270 I asked of you and in the asking of which I asked you to assume the facts set forth in hypothetical question A have been different in any respect if you had not known any facts regarding the rigid steel conduit industry other than those set forth in such hypothetical question?

A. No, sir; they would not have been different.

Q. Now, reference was made, I think this morning, perhaps yesterday afternoon, to monopolistic competition. Will you tell me wherein does the so-called monopoly exist in what is termed "monopolistic competition,"—situation. Perhaps we had better say a "monopolistic situation."

A. Well, the term "monopolistic situation" is used to describe certain competitive conditions. One of the commonest and simplest is a condition in which there is not that homogeneity of product which is essential for perfect or pure competition. That is illustrated by any product which is sold under a brand or a trade mark, for example, toothpaste. A particular seller gets his particular product identified with a certain trade mark, certain brand, he advertises, he gets the public well aware of that, and so he develops a certain customer preference for his particular brand.

Now, in the competition of toothpaste, the various toothpastes may be very similar, and nevertheless there is this little differentiation to which the customers give attention.

Now, that is, as I say, one of the simplest and com-
5271 monest situations that give rise to this particular kind of competition, and the term "monopolistic competition" was used because of the obvious fact that in his own trade mark or band each producer does have a monopoly.

Q. Does the term "monopolistic competition" imply any agreement or collusion between sellers?

A. No. No. None at all.

Q. Does the term "imperfect competition" imply any agreement or collusion between the sellers?

A. No, not at all.

Trial Examiner Norwood: Are you through?

Mr. Moore: I have two other questions.

Trial Examiner Norwood: Go ahead.

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By Mr. Moore:

Q. If you will refer to page of the record 4964, Professor Fairchild, Examiner Norwood asked you this question—it is at the bottom of 4964—"You are assuming if he departed from the basing-point system he would have to go on a uniform mill basis, are you?"

And your answer was: "As I testified, I cannot think of any other pattern."

Now, does that question and answer clearly set forth what you had in mind?

A. Well, did the question include the restriction of an
f.o.b. base—system—an f.o.b. method related to deliv-
5272 ered prices?

Q. No, it did not. The complete question is, if I may read it:

"You are assuming if he departed from the basing-point system he would have to go on a uniform mill basis, are you?"

A. Yes, that was an oversight on my part. I apparently assumed that the question itself excluded an f.o.b. mill basis based upon delivered prices, which, of course, would be another alternative as well as the uniform f.o.b. basis.

Q. And then on page 4969 the Examiner asked you this question:

"Now, in this answer you are assuming that in the absence of the basing-point system every mill would have to have a uniform f.o.b. price; is that right?"

A. No; I was assuming—

Q. You answered:

"I can't think of any other method of pricing."

A. No. I was assuming the absence of the basing-point system and the absence of the f.o.b. price method related to or dependent upon delivered prices under the basing-point system.

Mr. Moore: Now, Mr. Examiner, we have been asked to produce some authorities, and I am not sure that I under-
stand what the status of the last request was with
5273 reference to authorities. I think there the answer
cleared it up, that he would not expect to find any, so that that request in effect was withdrawn, but we were asked—

Trial Examiner Norwood: The situation is entirely between the witness and the counsel for the Respondents.

He has not been instructed to produce anything here, and if the counsel wants him to, he knows what steps to take.

Is that all the questions?

Mr. Moore: He certainly is not expected to do it today anyway.

Trial Examiner Norwood: Proceed. Are you through with your redirect?

Mr. Moore: I am through.

Trial Examiner Norwood: Any further questions?

Mr. MacIntyre: Yes, I have several questions.

Recross Examination.

Mr. Moore: Are these questions in re-rebuttal?

Mr. MacIntyre: I think they are recross, Mr. Moore.

Mr. Moore: Recross; excuse me.

Mr. MacIntyre: Yes.

By Mr. MacIntyre:

Q. In your reply to some of the last questions asked you by Mr. Moore as to what the terms "imperfect competition" and "monopolistic competition" implied, you were telling him what they implied to you; is that correct?

5274 A. Yes, but I think I am stating the general consensus of economic opinion, of modern economic opinion, we will say.

Q. It is your testimony that it is the consensus of economic opinion that the term "imperfect competition" relates to a condition which excludes collusion, understandings and agreements?

A. No, I didn't—that is not my testimony, and that was not the purport of my answer to this question.

Q. Well, can you tell, and can any economist tell, from the use of those terms, whether collusion, understandings, and agreements in restraint of trade are present in conditions to which those terms apply?

A. Well, if the term itself is "competition"—now, as I testified earlier in the day, you can't have very much collusion going on and still have a condition of competition, although you may have occasional sporadic instances. Now, the point of my—

Q. In other words, you would go back to your testimony this morning to explain that, wouldn't you?

The Witness: Can I finish my answer, Mr. Examiner?

Trial Examiner Norwood: Yes.

A. The point of my present testimony is that adding the adjective "imperfect" doesn't introduce any more collusion and combination.

Trial Examiner Norwood: I see.

5275 By Mr. MacIntyre:

Q. In other words you would want to rest upon your testimony this morning as to what you mean in that direction; is that correct?

A. Well, I was including some of my testimony this morning in my present answer to this.

Q. Well, you don't intend to change any of the testimony you gave this morning in that respect?

A. Oh, no, not at all.

Q. Now, isn't it a fact that the term "monopolistic competition" has been used by economists generally to describe a condition where control exists over prices by sellers; that is, one or more sellers acting in union?

A. That isn't my interpretation of the term.

Q. Well, doesn't that fit the term?

A. No, not as I used the term and as I very commonly understand it used. It doesn't relate to concerted action or collusion, but to this state of limited monopoly which I have just described. Now, I am not saying that there aren't some economists who may have used the term in some other way. There are terms on which there hasn't become complete agreement among economists.

Q. Well, isn't it a fact that the term "monopolistic competition" relates to a condition of control over price, whether it is by one man such as over a branded good

5276 of his, or whether it is controlled by more than one over any particular good?

A. It doesn't relate to a condition of control of price. It relates to a condition in which the sellers have just this certain advantage that they don't have under pure competition, which I have described.

Trial Examiner Norwood: What is that?

The Witness: The possession of a brand or something which puts them in a monopoly position with respect to that particular branded good.

Trial Examiner Norwood: It implies control of price as well as—

The Witness: No, it doesn't necessarily give them—

Trial Examiner Norwood: —supply and anything else; doesn't it, or does it?

The Witness: Yes, you are right, Your Honor. It gives them control of the supply of their own particular brand, but, of course, anybody has control of the supply of his own product.

Trial Examiner Norwood: Well, this division of it?

The Witness: Only in this case instead of his product being exactly like all the other competitors' products, it has a little difference, so if by "control" you mean the Colgate Company has control of the supply of Colgate toothpaste, that, of course, would be true.

5277 By Mr. MacIntyre:

Q. Well, if you had four manufacturers of toothpaste who acted in complete union as one, you would have monopolistic competition over the supply as well as the price of the product put out by the four; isn't that correct?

A. Well, now, if they all acted in unison, you would have a condition of combination or collusion, I suppose.

Q. Well, it would be monopolistic competition, too; wouldn't it?

A. No, it isn't competition at all.

Q. It would be monopoly; wouldn't it?

A. Well, I should rather describe it as collusion or combination. If you have four separate manufacturers of toothpaste, each with his own branded toothpaste, and they get together and act in unison and concert, I think there is a simple case of combination.

Q. Well, now, taking your Colgate situation, is there any competition in the Colgate Company with itself in the sale of Colgate's toothpaste? Now, you applied "monopolistic competition" to that situation. Now, where does competition come in there?

A. There is competition between Colgate and all the other manufacturers of toothpaste.

Q. Now, in my situation, four manufacturers acting in absolute control of the product instead of one,

5278 wouldn't they be in competition with somebody else, but wouldn't that be monopolistic competition, just as Colgate's control over one?

A. Well, there might be a situation in which that could be described as monopolistic competition, not because these

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four people have combined, but because there is one little group that are in competition with others, and the monopoly would be so little that there would be competition.

Take the case of a consolidated corporation, for example. From a certain time on you have one corporation, but if that corporation hasn't obtained monopoly of the field and there are others in the field, you have got competition going on, but the point is it isn't the getting together of these four that justifies the adjective "monopolistic." That was just applied to them because they had their brands.

Q. Yes, but if 15 sellers of rigid steel conduit get together and absolute absolute control over the price of rigid steel conduit when it is being sold in competition with substitutes for conduit, such as armored cable, and certain other types of electrical wiring installations, there would have to be with respect to the sale of rigid steel conduit a condition of monopolistic competition in the sale in competition with these other products?

A. That isn't the meaning of the term, no.

Q. How does that differ—

5279 Trial Examiner Norwood: I think he has answered that question, and the counsel said he was going to get through, and it is two minutes after five.

Mr. MacIntyre: Well, I have questions on these other matters that Mr. Moore raised.

Trial Examiner Norwood: Well, you generated it into argument there. We understand the position of the witness on that. He has explained it very thoroughly.

Mr. MacIntyre: Well, I will drop that subject if you feel that way about that, and take up the other subject Mr. Moore covered with him.

Trial Examiner Norwood: I am not going to stay here but five minutes.

By Mr. MacIntyre:

Q. If all manufacturers of rigid steel conduit switched from a basing-point system to a uniform f.o.b. mill system, that is, all of them, and in doing so dropped part of their sales forces, how would that increase the cost of conduit to anybody?

A. The dropping of the sales forces would not increase the cost of conduit. What you have got there is a shift from a highly efficient competitive mechanism to one that is less efficient. You have, it is true again, some saving

in reducing the cost of salesmen and advertising, which you would do if you went over to monopoly and com-
5280 bination. Monopoly would reduce some of the essential costs of competition.

Q. Well, if—

Mr. Stewart: Well, finish the answer.

Mr. MacIntyre: If I can't ask questions, and let him discourse, I will have to have more time with this witness.

Trial Examiner Norwood: Answer his question as directly as you can.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back on the record.

Go ahead.

A. (Continuing.) This change might mean a saving by eliminating some of the costs of competition, but it adds a cost by restricting the effective working of competition, and the net result of the saving on the one side and the increased cost on the other is an increase in the cost of the product.

By Mr. MacIntyre:

Q. Aren't you assuming there that the cost of one rigid steel conduit manufacturer would be raised if he switched over to a uniform mill price system instead of a basing-point system by virtue of him losing some of the business to somebody else who didn't do that?

A. That would be one of the reasons.

Q. Well, wasn't that an assumption in your an-
5281 swer to Mr. Moore?

A. That is one of the reasons.

Q. How could he lose to anybody else by switching over, if all switched over, by virtue of the switch-over?

A. Well, there might be fewer producers after you have gotten through.

Q. Yes. Then they would have more sales for each of those left than of those that existed prior to that time; isn't that correct?

A. That is just what you always get when you get the economies of large scale production in a wide market, more sales for each producer; obviously all producers could not have more sales.

Q. But if they all went over to an f.o.b. mill sytem at one time, one would not be losing to the other through

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invasions of markets because there would not be any reduction in the total demand for conduit brought about by virtue of the switch-over in the method of sale; would there?

A. There would not be a reduction in demand, but there might be a reduction in the amounts sold because of the wide scale market, necessitating a higher selling price and, although demand was the same, you couldn't sell as many as before at the higher price.

Q. You are assuming that when the switch-over occurred, if it should occur, that demand would fall
5282 off as a result of it?

A. No, no.

Q. How would the demand drop if it didn't fall off?

A. Well, you don't understand my definition of "demand." I am sorry to draw this out, Mr.—

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back on the record.

We will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 5:10 o'clock p. m., February 12, 1942, the hearing in the above-entitled matter was adjourned.)

5284 Proceedings.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is now reconvened in Room 532, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., Eastern War Time, February 13, 1942.

Please note the appearances.

Dr. Fairchild will please resume the stand.

FRED ROGERS FAIRCHILD, resumed the stand and testified further as follows:

Trial Examiner Norwood: Proceed.

Oh, one minute, please.

Now, of the lists of suggested corrections received by me up to the date of our convening the hearing this week I have checked all of them. A few appeared to me to be

unnecessary, and some appeared that they should not be made. These are very few. But I shall have them entered on the record at this place, and counsel may check them, and if any are left out that they think should be put in they may include them in future lists.

I will ask the Reporter to arrange these in order so far as possible.

Mr. MacIntyre: And you will reconsider any por-
5285 tion of that order if after my check I find that I would care to object to any part of it?

Trial Examiner Norwood: Yes, I will hear objections later on. Anything that is demonstrated to be an error at any time will be corrected up to the termination of this case.

Now, page 2768, line 8, strike "implored" and substitute "employed."

Page 2771, line 7, strike "isn't asked" and substitute "answers."

Now, those are errors which the Trial Examiner found in his own statements and has made the corrections without reference to counsel. They may lodge objections hereafter if they feel like it.

The other corrections which have been suggested by counsel are approved and ordered made, as follows:

Page 1212, line 23, change "applying from to" to "applying to."

Page 1227, line 16, change "contract" to "contact."

Page 1234, line 25, change "possessions where" to "possessions. Where."

Page 1241, line 24, change "his" to "this."

Page 1252, line 25, change "was" to "would be."

Page 1258, line 19, change "familiar" to "not
5286 familiar."

Page 1270, line 9, change "his" to " this."

Page 1378, line 15, change "are as a" to "are a."

Page 1395, line 13, change "listing" to "list and."

Page 1469, line 1, change "idea" to "one."

Page 1487, line 16, change "from" to "for."

Page 1487, line 17, change "manufacturers" to "manufacturing."

Page 1499, line 20, change "control" to "contract."

Page 1525, line 10, change "Public" to "Republic—."

Page 1546, line 18, change "reference" to "influence."

Page 1555, line 14, change "September" to "December."

Page 1611, lines 3 and 11, change "traveling" to "traffic."
Page 1660, line 4, change "To" to "We."
Page 1668, line 1, change "it in" to "it except in."
Page 1674, line 5, change "less" to "plus."
Page 1726, line 16, change "dictator" to "dictator of."
Page 1746, line 11, change "effort" to "evidence."
Page 2027, line 22, change "and pickled" to "and is pickled."
5287 Page 2028, line 10, change "for" to "with."
Page 2034, line 3, change "that is," to "and."
Page 2036, line 11, change "skelping" to "skelp."
Page 2053, line 25, change "conduits made" to "conduit plants."
Page 2079, line 19, change "executory" to "executive."
Page 2085, line 12, change "Pendeton" to "Penn Denton."
Page 2112, line 19, change "with" to "of."
Page 2112, line 21, change "formal" to "form of."
Page 2112, line 22, change "you had with Steelduct" to "which Steelduct had."
Page 2149, line 14, change "for" to "coated."
Page 2205, line 12, change "hundred" to "minute."
Page 2272, line 19, change "not at" to "not the."
Page 2272, line 19, change "at just" to "just."
Page 2293, line 22, change "after" to "before."
Page 2301, line 1, change "company" to "card."
Page 2313, line 1, change "country-wise" to "country-wide."
Page 2324, line 24, change "conduit" to "carload."
Page 2326, line 25, change "but" to "and."
Page 2362, line 22, change "doesn't" to "does."
Page 2391, line 25, change "by" to "on."
5288 Page 2394, line 18, change "the demand" to "conduit."
Page 2406, line 11, change "haven't" to "have."
Page 2413, line 1, change "My answer is correct. My answer is correct." to "My answer is incorrect."
Page 2440, line 17, change "would" to "would not."
Page 2479, line 5, change "experience" to "expense."
Page 2500, line 7, change "a clever person" to "clairvoyant."
Page 2549, line 17, change "of" to "in."
Page 2550, line 12, change "them" to "him."

Page 2566, line 6, change "all" to "only."
Page 2568, line 18, change "be a" to "be only a."
Page 2568, line 18, change "is not." to "it."
Page 2574, line 10, change "Commission" to "Respondents."
Page 2584, line 21, change "manufacturer" to "manufacture."
Page 2584, line 24, change "product" to "protect."
Page 2591, line 1, change "the conduit" to "rigid conduit."
Page 2608, line 15, change "that" to "and."
Page 2630, line 16, change "not only" to "normally."
Page 2630, line 17, change "company shall show" to "companies shall show."
Page 2630, line 18, change "Examiner the" to "Examiner, the."
5289 Page 2630, line 20, change "Respondent Company's" to respondent companies".
Page 2632, line 3, change "of" to "at".
Page 2651, line 6, change "in his advantage" to "to his disadvantage".
Page 2651, line 8, change "; created" to "; it created".
Page 2651, line 16, change "They" to "We".
Page 2662, line 19, change "than" to "from".
Page 2662, line 20, change "and" to "than".
Page 2662, line 24, change "our" to "an".
Page 2669, line 17, change "to" to "too".
Page 2672, lines 23 to 25, change "do you when asked 'only the prices which are shown in your last published card until a new card is issued and published by you'?" to "do you, when asked, quote only the prices which are shown in your last published card until a new card is issued and published by you?"
Page 2673, line 3, insert "off" between "7½" and the comma.
Page 2680, line 21, change "named" to "mailed".
Page 2681, line 17, change "1940" to "1930".
Page 2681, line 18, change "cost" to "card".
Page 2682, line 2, change "except as a list" to "and discount method".
5290 Page 2692, line 3, change "answered" to "understand".
Page 2703, line 10, change "national" to "National".
Page 2703, line 24, change "I did." to "I did not."

Page 2709, line 16, change "temporary" to "contemporary".

Page 2718, line 10, change "148-A" to "140-A".

Page 2726, line 14, change "in" to "on".

Page 2730, line 13, change first "it is" to "is a", and change second "it is" to "is a".

Page 2752, line 5, change "on" to "or".

Page 2755, line 3, change "December 1, 1937" to "December 31, 1936".

Page 2760, line 3, change "temporary" to "contemporary".

Page 2760, line 5, change "ad litem modum" to "ante litem motam".

Page 2799, line 24, change "quick on" to "quick enough on".

Page 2802, line 22, change "of" to "it is".

Page 2806, line 13, change "my respect" to "any respect".

Page 2812, line 18, change second "it" to "installation".

Page 2813, line 6, change "can" to "can't."

5291 Page 2819, line 22, change "any" to "an f.o.b."

Page 2822, line 16, change "plus" to "price less".

Page 2825, line 21, change "different" to "Government".

Page 2834, line 12, change second "don't" to "wouldn't".

Page 2914, line 6, change "riders" to "writers".

Page 2947, line 5, delete first "as".

Page 2954, line 12, add word "and" at end of line.

Page 2957, line 6, change "Agreements" to "No verbal agreements".

Page 2959, line 21, delete word "and".

Page 2961, line 1, change word "was" to "were".

Page 2970, line 6, change "that" to "I thought".

Page 2990, line 23, "Rigis" should be "Rigid".

Page 2991, line 18, "possible" should be "possibly".

Page 2995, line 18, last word should be "has" instead of "his."

Page 3000, line 3, "particular" should be "particularly".

Page 3001, line 11, "to" should be "of".

Page 3012, line 18, "to" should be "of".

Page 3015, line 2, "organization" should be plural.

Page 3040, line 6, "producer" should be plural.
5292 Page 3046, line 6, "customers" should be "companies".
Page 3046, line 24, "meeting" shall be plural.
Page 3047, line 18, second "of" should be "by".
Page 3048, line 6, change "retailers" to "retaliatory".
Page 3076, line 20, "manufacturer" should be plural.
Page 3090, line 7, "concession" should be "confession".
Page 3090, line 10, "Respondent" should be plural.
Page 3092, line 19, change "not, and" to "not".
Page 3095, line 19, change "it" to "they".
Page 3102, line 8, insert "it" after "about".
Page 3105, line 8, "that" should be "when".
Page 3118, line 9, change "to" to "as".
Page 3119, line 11, insert "at the" after "hold" and delete word "this".
Page 3123, line 9, change "from" to "to".
Page 3124, line 18, change "from" to "to".
Page 3124, line 20, change "from" to "to".
Page 3126, line 8, add word "them" at end of line.
Page 3133, line 20, "agent" should be "agency".
Page 3200, line 13, change "statement" to "state".
Page 3203, line 22, change "of" to "or".
Page 3204, line 17, change "they do" to "do you".
Page 3220, line 6, change "200" to "2,000".
Page 3237, line 20, change "sell" to "fill" and "years" to "months".
5293 Page 3258, line 10, change "is" to "was".
Page 3259, line 2, strike "and the plant".
Page 3260, line 3, change "the" to "a".
Page 3266, line 20, change "supervisor of agency" to "Supervisory Agency".
Page 3275, line 21, change "1924" to "1934".
Page 3283, line 17, change "we" to "he".
Page 3285, line 8, change "in price" to "in pipe price".
Page 3285, line 18, change "increased why," to "inceased price, why,".
Page 3285, line 21, change "pipe" to "conduit".
Page 3287, line 8, change "that" to "because".
Page 3289, line 24, change "came from" to "carried".
Page 3294, line 9, change "And" to "In".
Page 3309, line 14, change "was exactly" to "was not exactly".
Page 3312, line 12, change "at his" to "at our".

Page 3312, line 24, change "Well" to "We".
Page 3313, line 3, change "whom to" to "the".
Page 3314, line 22, change "able" to "ability".
Page 3318, line 5, change "1938. When" to "Since 1938 when".
Page 3318, line 6, change "after" to "After".
Page 3328, line 19, change ", but" to "that".
5294 Page 3331, line 1, change "Parks" to "Works".
Page 3332, line 18, change "bids" to "records".
Page 3335, line 12, change "requested" to "requests".
Page 3346, line 20, change "coordinated" to "coordinate".
Page 3348, line 5, change "show. We" to "show."
Page 3348, line 6, change "simply, in" to "In".
Page 3348, line 12, change "we" to "he".
Page 3348, line 22, change "Administration, this" to "Administration of this".
Page 3386, line 16, change "purpose" to "period".
Page 3390, line 3, change "and the" to "and in".
Page 3428, line 19, change "1936" to "1937".
Page 3438, lines 20 and 25, change "have" to "make".
Page 3446, line 18, change "manage" to "meet".
Page 3465, line 10, change "to Mr." to "to find Mr."
Page 3466, line 11, change "1939" to "1929".
Page 3493, line 19, change "list discount" to "list and discount".
Page 3508, line 3, change "smarter" to "smaller".
Page 3530, line 12, change "conceive of" to "conceive".
Page 3546, line 2, change "Robert Hula" to "H. H. Benfield".
Page 3561, line 18, change "that" to "not".
Page 3594, line 6, change "confine" to "consign".
5295 Page 3255, line 1, change word "our" to "out".
Page 3256, line 19, insert word "work" after word "own".
Page 3609, line 1, change "concerned" to "consigned"; line 3, change "is" to "was".
Page 3610, line 25, change "except" to "object".
Page 3614, line 16, delete the period at the end of line and add "to the General Electric Co."
Page 3615, line 2, strike the word "that"; line 12, insert "at" after "that".

Page 3616, line 9, strike "at"; line 10, insert "was" in lieu of ","; line 11, change "," to ";".

Page 3621, line 4, transpose first two words; line 13, delete "by just a".

Page 3622, line 18, change "leading" to "remaining".

Page 3623, line 8, change "on the" to "under"; line 11, change "as" to "that".

Page 3627, line 23, change "that" to "a".

Page 3629, line 2, insert "did" before "the". Line 3, strike out "did not."

Page 3632, line 2, strike out "to".

Page 3636, line 12, insert "known" before "General".

Page 3637, line 8, strike "regarding".

Page 3641, line 21, change "of aiding" to "re-
5296 garding".

Page 3646, line 10, strike "that to show".

Page 3649, line 3, change "job" to "public".

Page 3652, line 16, change "gets" to "meet".

Page 3654, line 24, change "these" to "they".

Page 3664, line 15, strike the letter "s" at the end of line.

Page 3666, line 15, change "in" to "and".

Page 3667, line 16, change "true" to turn"; line 18, strike "the" at end of line. Line 19, strike the letter "s" at end of line.

Page 3668, line 5, insert "Q" at beginning of line. Line 14, insert "a" at end of line.

Page 3670, line 5, change "of" to "and". Line 20, change "receive" to "send".

Page 3689, line 6, change "discussed" to "spoke".

Page 3694, line 13, change "Desmond" to "Dustman".

Page 3696, line 14, change "kept" to "made".

Page 3697, line 2, insert "have" before "never."

Page 3697, line 3, insert "have" before "never." Line 10, insert "have" before "never."

Page 3699, line 22, change "Pen" to "Penn". Line 24, change "talk at" to "discuss".

Page 3700, line 20, change "These" to "The" and change "members" to "meetings".

5297 Page 3701, line 7, change "seen" to "saw". Line 9, strike "the" at end of line.

Page 3708, line 14, change "in" to "by".

Page 3711, line 12, insert "and" in lieu of the ".".

Page 3718, line 4, change "had" to "has".
Page 3727, line 12, change the first "the" to "an".
Page 3730, line 16, change "there are" to "the".
Page 3732, line 25, strike "unfortunately".
Page 3741, line 15, change the line to read "to his answer than this quibbling would seem to indicate." Line 16, strike "now".
Page 3767, line 3, change "Welch" to "Poskanzer".
Page 3772, line 2, change "Welch" to "Poskanzer".
Page 3773, line 22, change "Welch" to "Poskanzer".
Page 3790, line 3, change "you" to "he".
Page 3795, line 14, change "Welch" to "Poskanzer".
Page 3796, line 24, change "Welch" to "Poskanzer".
Page 3806, line 4, strike "got". Change "man" to "men".
Page 3835, line 14, change "I" to "J".
Page 3841, line 4, insert "Now, will you state" in lieu of "You were asked before."
Page 3973, line 19, change "a" to "the last".
Page 3976, line 11, change "meetings" to "topics".
Page 3984, line 20, change "present" to "personal".
5298 Page 3993, line 10, omit "was".
Page 4000, line 1, change "this" to "these".
Page 4000, line 18, omit second "but".
Page 4004, line 19, add "to" at end of line after "testified".
Page 4022, line 11, change "is" at end of line to "was".
Page 4022, line 18, change "Chamber" to "Department".
Page 4026, line 2, remove "with".
Page 4027, line 21, change "has" to "had".
Page 4028, line 14, change "instances" to "inferences" and change "he" to "it".
Page 4029, line 16, change "am" to "have".
Page 4029, line 17, change "stating" to "stated".
Page 4029, line 21, change "the" to "their".
Page 4039, line 20, change "ele" to "else".
Page 4041, line 22, change "they" to "we".
Page 4043, line 14, change "this" to "its".
Page 4059, line 19, change "cooperate" to "corroborate".
Page 4088, line 5, change "it is" to "thought".
Page 4092, line 3, add "and non-members" at end of line.

Page 4092, line 4, insert "these exhibits" after 5299 "on".

Page 4092, line 4, omit "and".

Page 4093, line 12, change "resulted" to "resulting".

Page 4111, line 13, omit "was".

Page 4112, line 15, change "in" to "and".

Page 4113, line 6, change "meeting" to "meetings".

Page 4123, line 5, change "Bozeman" to "Norwood".

Page 4123, line 12, change "Bozeman" to "Norwood".

Page 4124, line 2, strike "in the figure".

Page 4140, line 2, insert "off" after "are".

Page 4189, line 15, change "exclude" to "include".

Page 4234, line 19, change "specify" to "observe".

Page 4259, line 7, insert "customer's" between "your" and "warehouse".

Page 4279, line 2, change "say" to "saw".

Page 4291, line 3, change first "which" to "what", and omit second "which", and change "wholesaling" to "wholesalers".

Page 4291, line 9, change "he" to "they".

Page 4296, line 17, change "lower" to "higher".

Page 4317, line 23, change "delivery" to "delivered".

Page 4322, line 19, change "due" to "dual".

Page 4323, line 12, delete "were allowed to" and insert instead "would".

Page 4324, line 2, "Exhibit No. 158-A" should be 5300 described "158-A to 158-G".

Page 4324, line 12, "Exhibit No. 158-A" should be described "158-A to 158-G".

Page 4326, line 23, "Exhibit No. 158-A" should be described "158-A to 158-G".

Page 4333, line 6, change "it" to "they".

Page 4335, line 16, change "Darlan" to "Garland".

Page 4335, line 19, change "Darlan" to "Garland".

Page 4336, line 15, the word "years" should be changed to "year".

Page 4340, line 20, change "and" to "of".

Page 4342, line 18, change "suppose" to "supposed".

Page 4345, line 18, insert "not" between "am" and "objecting".

Page 4348, line 22, change "this" to "his" and "1927" to "1937" and insert "had been" between "1937" and "referred".

Page 4359, line 18, change "contract" to "contracts".

Page 4375, line 12, change "petition" to "report".
Page 4382, line 6, insert "in" between "that" and "none".
Page 4387, line 1, change "Art" to "Arc".
Page 4396, line 20, change "on" to "and".
Page 4406, line 16, change "Battinger" to Baitinger".
5301 Page 4406, line 17, change "Battinger" to "Baitinger".
Page 4406, line 18, change "Battinger" to "Baitinger".
Page 4410, line 6, change "where" to "whether".
Page 4423, line 23, change "had" to "has".
Page 4430, line 19, change "have" to "had" and insert "you" between "had" and "ever".
Page 4435, line 1, change "reverse" to "revise".
Page 4435, line 9, omit "that".
Page 4438, line 5, change "assignment" to "Consignment".
Page 4440, line 9, change "higher" to "lower".
Page 4446, line 5, insert "having" between "their" and "no".
Page 4449, lines 20 and 21, change "information to "action".
Page 4454, line 4, change "monk" to "mark".
Page 4487, line 13, change "last" to "lowest".
Page 4492, line 20, change "attorney" to "Comptroller".
Page 4531, line 18, change "1937" to "1939".
Page 4475, line 18, change "Mr. Austin" to "Mr. Houston".
Page 4480, line 21, change "metal" to "conduit".
Page 4484, line 22, add "practice" at end of line after "business".
5302 Page 4501, line 5, change "materiality as" to "materiality and as".
Page 4513, line 18, change "volume" to "as follows".
Page 4513, line 24, change "figure" to "figures".
Page 4513, line 25, change "adequately" to "accurately".
Page 4518, line 17, change "retail" to "resale".
Page 4519, line 11, change "sales from" to "sales. From".
Page 4519, line 12, change "record. That" to "record, that".

Page 4537, line 16, change "think" to "thought".
Page 4541, line 17, change "of" to "in".
Page 4569, line 16, change "show any" to "show in any".
Page 4569, line 17, change "show any" to "show in any".
Page 4582, line 14, change "advised" to "advisable".
Page 4585, line 15, change "he" to "we".
Page 4610, line 18, change "gets" to "requests".
Page 4611, line 18, change "receives" to "received".
Page 4682, line 17, change "on" to "of".

Trial Examiner Norwood: Proceed with the ex-
5303 amination.

Cross-Examination by Mr. MacIntyre (Continued).

Q. Doctor, yesterday afternoon during the course of your redirect examination by Mr. Moore, when you said that costs would be increased under a uniform f.o.b. mill system of pricing over what they are under a basing-point system of delivered price quotations, were you speaking from any knowledge that you have showing that under such changes there have ever been any such increases in costs?

Mr. Moore: I object to that question, Mr. Examiner. I do not remember that the witness said that costs would be increased. He has not correctly, as I remember it, stated the answer to the question.

Trial Examiner Norwood: But the counsel—

Mr. MacIntyre: I refer Your Honor to the answer beginning at line 4, page 5269, and then ask that my question be read.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Moore: I withdraw the objection, Your Honor.

Trial Examiner Norwood: Answer the question.

A. I was speaking with reference to the application of economic principles to two conditions. I meant that, other
5304 things being equal, costs would be greater under a uniform f.o.b. mill basis than under a basing price method.

By Mr. MacIntyre:

Q. In other words, you were speculating as to what might possibly happen; is that correct?

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A. No, I would not consider that correct.

Q. Well, you do not know that such has ever occurred, do you?

A. I was not testifying as to matters of fact, but as to the application of economic principles.

Q. Weren't you speculating as to what would occur?

A. I do not admit that I am speculating when I am applying economic principles to a hypothetical condition.

Q. Well, you were doing no more than giving your opinion as to what probably would occur; is that correct?

A. I was giving my statement as an economist of the economic principles, as I understand them.

Q. And is that any more than your opinion as an economist as to what would happen?

A. My statement of economic principles.

Q. Well, isn't it your statement of your opinion?

A. No, I would not put it that way. A statement of my opinion might simply be my idea—

Trial Examiner Norwood: Now, he has answered the question three times. Proceed.

Q. Well, are you drawing upon any principle of 5305 economics which states that such has ever occurred in a switch from a basing-point system of delivered price quotations to a uniform system of—I mean to a system of uniform f.o.b. price quotations?

A. Well, as I have said before in answer to similar questions, that isn't the way economic principles are framed. Economic principles state that—

Mr. MacIntyre: Well, now, if Your Honor please, I ask that the witness first answer the question and then explain it if he cares to.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I should think you could give a direct answer to that.

A. Yes. I am not drawing upon a principle stated in exactly those words.

By Mr. MacIntyre:

Q. Do you know of any statement of any economic principle to the effect that that has occurred?

A. That isn't a statement of economic principles. A statement of economic principles is a statement of what will occur under certain conditions.

Q. And can you cite us any statement of economic

principle which states that a switch from a basing-point system of delivered price quotations to a uniform
5306 f.o.b. mill system of price quotations would increase cost?

A. I think that is exactly the question that I answered a moment ago.

Q. That there is no statement of economic principles in that way? Is that what you are trying to tell us now?

A. No, that is not. I have already answered that question by saying that I am not drawing upon an economic principle stated in precisely the words which you put in your question.

Q. That is, you are not drawing upon such a statement in economic principle?

A. Not the precise statement which you included in your question.

Q. Now, you told us yesterday afternoon on this page that I have cited that a switch from a uniform f.o.b.—a switch from a basing-point system of delivered price quotations to a uniform f.o.b. mill system would reduce sales expenses and advertising expenses; you recall that?

A. Yes.

Q. You will also agree that it would reduce expenses in so far as cross-hauling represents an expense; will you?

A. It would tend to do that.

Q. Well, it would do that; wouldn't it?

A. Well, I mean by "tend to do" that it would—

Q. If you did not have cross-hauling you would not have cross-hauling expenses; would you?

5307 A. I agree to that.

Q. Now, if you reduce the sum total of cost of producing conduit and selling conduit in the United States on the part of all producers by all of them reducing their sales expenses, their advertising expenses, and their cross-hauling expenses, how would that increase costs?

A. That alone does not increase costs. That, as you say, reduces cost, but, as I testified yesterday,—

Q. Well, wait a minute. We are going on to another question now, Doctor. You answered my question now. Now, I want to ask you another one.

Mr. Bozeman: If Your Honor please, it seems to me that Mr. MacIntyre should not be entitled to decide for himself when an increase is complete.

Trial Examiner Norwood: Well,—

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Mr. Bozeman: That is up to Your Honor to decide that.

Trial Examiner Norwood: Well,—

Mr. MacIntyre: Well, we have the witness' testimony of yesterday already, and we don't want him to repeat it.

Mr. Bozeman: You are one of the contending counsel in this proceeding and not the judge.

Trial Examiner Norwood: He happened to decide right in that instance.

5308 Mr. Moore: If I may, now that we have interrupted ourselves, say—

Trial Examiner Norwood: The counsel may ask him questions and bring out anything else that he thinks has been left out.

Mr. Moore: I want to point this out: That I do not remember anything in the testimony of Dr. Fairchild yesterday with reference to a switch from one method to another method. I don't know that it is important, but I do think that counsel, when he states something that the witness has said, ought to at least point to the record where the statement was made by the witness.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: The question is answered. I am ready to ask another one.

Trial Examiner Norwood: Eliminate that last remark of mine.

Proceed.

By Mr. MacIntyre:

Q. If there should be a switch by all of the conduit manufacturers in this country from a basing-point system of delivered price quotations to a system of uniform f.o.b. mill quotations, how would that reduce in itself the average tonnage of sales of those manufacturers?

Mr. Moore: May we have the question read, please?

5309 Trial Examiner Norwood: Read it.

(Question read.)

A. A switch from one method to another will not produce a certain result unless we know that other things are equal. I have been careful to say that this is comparisons, not between one time and another time during which interval various other circumstances may have changed, but are simultaneous possibilities at a given time. Now, with that interpretation I may say that if, as I have testified, the costs under a uniform mill base method would tend to be greater than the costs under a basing-point method, then

it might follow that the total production would be less. Because of higher costs the industry might be able to sell a smaller volume of product.

By Mr. MacIntyre:

Q. I see. You have assumed there that the cost would be greater in assuming that the amount produced would be less; is that correct?

A. Well, I had previously testified that, in my opinion, the cost would be greater, and then from that I had drawn the conclusion that the total quantity sold might be less.

Q. Well, haven't you also assumed with respect to this entire question as to whether or not costs would be increased, and on the further assumption, therefore, that production would be less, that the basing-point system of
5310 delivered price quotations is more competitive than a system of uniform f.o.b. mill quotations?

A. I have already testified to that effect, that—

Q. Well, that is your assumption, isn't it?

A. It is the testimony of my opinion as an economist.

Q. Isn't that the basis of—isn't that an assumption that you use as the basis for the assumption that costs would be increased and production would be less?

A. That is part of what underlies that conclusion.

Q Now, if you assumed, for example, that competition would be greater under a uniform f.o.b. mill system than it has been under the basing-point system of delivered price quotations, would you change your testimony as to the increase in cost and the reduction in the amount of production?

A. I would not change my basic statement because I would wish then to proceed to point out what the differences were between a uniform—a uniform f.o.b. mill basis and a delivered price basis. Having shown those differences, I think I would demonstrate that the hypothesis was erroneous, and that—

Q. Well, I am not asking you to assume that the hypothesis is erroneous, Doctor. I am asking you to assume that the hypothesis that I have just put to you is a correct hypothesis. Then what would you do with respect to the answers that you have just made about the increased cost and the reduction of tonnage?

5311 A. I have already answered that. I repeat, I would then examine the various differences between these

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two bases and inquire as to whether or not the cost would be greater under the one or the other.

Q. But you would have to do that before you could say that they would be increased; isn't that correct?

A. Well, by "examine" I mean I would apply to this problem the economic principles which I have already applied in—

Q. Can you do that this morning for us as easily as you did apply such so-called principles in your answers to Mr. Moore yesterday afternoon on direct examination?

A. Yes.

Q. All right. Let us do that.

Mr. Stewart: I object to the characterization "so easily." I think that can go out of that question.

Trial Examiner Norwood: Objection overruled.

By Mr. MacIntyre:

Q. Let us do that, then, Doctor.

A. Well, under a uniform mill base method—

Q. Now, assuming that that is more competitive—

5313 By Mr. MacIntyre:

Q. Now, Doctor, assume that under a system of uniform f.o.b. mill price quotations in the sale of rigid steel conduit there is more competition, price competition, among the sellers than under a system of—a basing-point system of delivered price quotations.

Would a switch by all of them to that system from the basing-point system increase costs?

5314 A. I can't say that it is—that it would increase costs—or would or would not, without applying economic principles to the comparison between these two methods.

By Mr. MacIntyre:

Q. Can't you apply the economic principles to determine the answer to that question as I have put it to you?

A. I think I can.

Q. Well, let us do that and then answer the question.

A. In the uniform f.o.b. mill basis each mill would be—

Q. Now, don't get away from my assumption in this, that there is more competition in it than there is under the basing-point system.

A. Have I gotten away from that assumption?

Mr. Stewart: That is what I object to, Your Honor. I

don't see why he should interrupt him in the middle of an answer. I think that is most unfair.

Trial Examiner Norwood: Well, there are many unnecessary interruptions going on.

5315 Proceed and answer the question.

A. Under an f.o.b. mill basis each mill would be surrounded by an area within which it would be the one seller. There would be frontier lines dividing its selling area from the areas in which other mills sold. Within each of these areas this mill would be the only mill selling to buyers. The several mills would find it of less use to have their well organized sales forces located in various markets throughout the country. They would probably have few if any salesmen located in places outside of the markets within their own particular territories. The only way that a mill could reach out and extend its territory would be to lower its base price—

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: There is the question.

Trial Examiner Norwood: Answer that.

The Witness: I have answered that already.

Trial Examiner Norwood: Answer it again.

By Mr. MacIntyre:

Q. What is the answer?

A. I would not say whether it would increase costs or would not increase costs without inquiring into the
5316 economic principles that relate to the two different methods of pricing.

After that I was asked another question which I started to answer.

Mr. Stewart: He did not read the question that was asked.

Mr. MacIntyre: If he can't answer that question that has just been read—

Trial Examiner Norwood: On the record.

Ask him another question.

By Mr. MacIntyre:

Q. Doctor, have you ever analyzed a situation where all manufacturers of a homogeneous and standardized product switched from their use of a basing-point system of delivered price quotations to a system of uniform f.o.b. mill quotations for the purpose of determining whether such a switch would increase costs?

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A. You mean an actual, factual condition?
Q. Well, examined it either firsthand or secondhand.
A. Yes, but I mean—
Mr. Stewart: I object unless counsel states that such a condition ever occurred.
Trial Examiner Norwood: The objection is overruled.
5317 He is asking this witness if he knows.
Mr. Stewart: If it assumes it ever happened, that is the point.
Trial Examiner Norwood: Please.
Answer the question.
A. I have not examined such a factual situation.

By Mr. MacIntyre:

Q. Either firsthand or secondhand?
A. No, not a factual situation. I am applying economic principles.
Q. Well, isn't that one of the reasons, then—that is, your answer to the last question, isn't that the reason you can't answer the question that I put to you in which I assumed that under the uniform f.o.b. mill system there was more competition than there was under the basing-point system?
A. I did answer your question.
Q. I say, isn't that the reason you can't answer, because you never made any study of it?
A. But I did answer your question. There isn't any reason why I couldn't answer it. I did answer it.
Mr. MacIntyre: Read that question in which I assumed more competition, and his answer to it.
Off the record.
(Discussion off the record.)
Trial Examiner Norwood: Go ahead.

5318 By Mr. MacIntyre:

Q. If we were to assume, Doctor, for purposes of argument, that a switch from a basing-point system of delivered price quotations to a system of uniform f.o.b. mill quotations did increase costs, you were speaking in that direction of commercial costs, were you?
Mr. Stewart: What is that?
Mr. MacIntyre: Strike that.
If there is going to be a lot of objection over it, I will cite him to his answer here.

Mr. Stewart: No. You ask your question.

Mr. MacIntyre: All right, you just strike the question that I asked the witness.

By Mr. MacIntyre:

Q. I am showing you your answer, which appears beginning at line 4 on page 5269. You were referring there to commercial costs, were you, Doctor?

A. I was referring to all the costs of production, the total cost of production.

I don't know quite how you distinguish commercial costs from other costs.

Q. Do you make any distinction between commercial costs in production and effects upon national economy as a social cost?

A. Well, I was talking of the cost of producing
5319 rigid conduit.

Q. You were not speaking of costs to a national economy?

A. I don't know what that means.

Q. Or costs to society?

A. Well—

Q. You were speaking of costs of production in the commercial sense, weren't you?

A. Well, I don't like to say the commercial sense, because I am not aware of that as a technical term which might be wholly unambiguous, but I think my use of "costs" is quite clear; I was referring to all of the costs of production, and I at another place specified what a good many of those costs were by way of illustration.

5321 Q. Doctor, I am referring to your answer which begins on page 5269, on your redirect examination yesterday afternoon, concerning your reliance upon Mr. Moore's hypothetical question A for your answers.

Mr. Moore: May I have the page reference, please?

Mr. Stewart: 5269.

By Mr. MacIntyre:

5323 Q. Now, at page 5267, on your redirect examination, Mr. Moore asked you about this conference that you attended with other economists in New York. Were you during the course of that conference employed by Respondents to come here and testify?

A. You mean had I been engaged to testify in this case?

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Q. Well, were you at the time that you were in that conference employed to come here and testify?

A. Yes.

Q. And you were employed by the Respondents?

A. Yes.

Q. You have received pay for coming here, or at least a promise of pay for coming here and giving your testimony, have you?

A. Yes.

Q. And you believe in being loyal to your employer, do you?

Mr. Moore: I think I shall object to that, Your Honor. This witness is under oath.

Trial Examiner Norwood: Well, I think the Doctor can explain the position there. The question has been
5324 asked and I think it is a privilege to explain it. If he does not want to explain it, he does not have to.

A. Well, I think that explanation is simple enough. I had been employed to testify as an expert in the field of economics.

By Mr. MacIntyre:

Q. Do you believe in being loyal to your employer?

Mr. Stewart: Now—

The Witness: Suppose I answer the question.

Trial Examiner Norwood: I think that is irrelevant and immaterial and should be excluded. If you want to bring out any facts as to this witness' connection with Respondents, you can do so.

Mr. MacIntyre: Well, I am merely, in asking that question, if Your Honor please, relying upon some of the best authorities in the country to the effect that the opposing counsel is entitled to put questions to an expert witness for the purpose of determining whether he has received pay for his testimony and any other facts that are relevant and material which might go to the—

Trial Examiner Norwood: You should have gone into that when he was under cross-examination proper.

Mr. MacIntyre: Is the objection sustained to that question?

Trial Examiner Norwood: Yes.

5325 Mr. MacIntyre: That is all, Doctor.

5326 Trial Examiner Norwood: The witness is discharged.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. Austin: If Your Honor please, on February 3, Tuesday, when hearings were held here very briefly in Washington I was not present, and on that day Mr. MacIntyre, after a stipulated agreement with counsel for Spang Chalfant, had a document marked for identification Respondents' Exhibit No. 333, and also placed in evidence, with your consent, a stipulation that he had entered into. That stipulation on page 4860 of the record contains a statement that L. E. Latham, my client, under date
5327 of July 12, 1940, replied to a letter of A. E. Walker dated July 9, 1940, and that such letter is the one now marked for identification as Respondents' Exhibit 333. Mr. Walker's letter to Mr. Latham is quite fully and adequately described in the stipulation. For that reason I suppose it was not placed in evidence. However, there is no description of any kind in Mr. Latham's letter in reply. It is referred to, and almost any inference can be drawn from the fact that he replied to Walker's letter.

I, therefore, feel that it is only fair to my client that Respondents' Exhibit, for identification, 333 be admitted in evidence. I think, personally, that a study of the record will show that Mr. Latham, when he was on the stand, testified to what appears in the letter, and, therefore, the letter is solely corroborative of his testimony. On the other hand, that is not shown in the stipulation.

Furthermore, through no fault of Mr. MacIntyre's at all, I was not consulted by counsel for Spang Chalfant about the wording of this stipulation.

Finally, I believe that this is admissible in evidence because it is referred to by reference in a stipulation, and, in order to have the entire story in, it should be in the record, and I, therefore, offer Respondents' Exhibit, for identification, 333 in evidence.

Trial Examiner Norwood: Any objection?

5329 RESPONDENTS' EXHIBIT 333 was offered and received in evidence.

Mr. MacIntyre: For the truth of the statements contained in the letter without right of cross-examination?

Trial Examiner Norwood: I don't want to sum up everything he has said here, but they are clearly in mind, and the record shows just for what purposes they are received.

Mr. MacIntyre: Mr. Austin has not limited his offering

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to showing that it was merely a letter written and that it should not be taken as the truth of the contents of it at all. That has not been placed as a limitation upon his offer. I don't think it would be admissible even if
5330 such limitation were placed, but I certainly would urge that if my objection to the letter should be overruled and that it be received, that it would be grossly unfair if it were received without that limitation.

Trial Examiner Norwood: I understand he offered it here as explanatory and to complete the picture presented by the stipulation and by the other letters.

Is that right?

Mr. Austin: That is right, sir, and furthermore—

Trial Examiner Norwood: And not to prove the truth of any hearsay statements that might be contained therein.

Mr. Austin: Absolutely. As I remember the letter, there is no statement of fact in the letter. It is a statement of what was in a man's mind at a given time.

Trial Examiner Norwood: I think so.

Mr. Austin: Now, whether he had that in his mind truly or falsely, I don't contend one way or the other. That was in his mind at the time.

Trial Examiner Norwood: Proceed.

Mr. Moore: I will ask that Professor Griffin be sworn.

CLARE E. GRIFFIN, was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

5331 *Direct Examination by Mr. Robison.*

Q. Professor Griffin, I show you a statement which purports to be a statement of your training, experience, and qualifications as an economist, and ask you whether you have previously seen that statement?

A. I have; yes, sir.

Q. Does that statement correctly set forth your training, experience, and qualifications as an economist?

A. It does.

Q. And you testify to the truth of the statements therein contained?

A. I do.

Mr. Robison: I ask that the statement which the wit-

ness has so verified be incorporated in the record as the testimony of the witness concerning his training, experience, and qualifications as an economist.

Trial Examiner Norwood: It may be so incorporated.

(The statement is as follows:)

I am at the present time connected with the University of Michigan located at Ann Arbor, Mich. I am Professor of Marketing, Director of the Bureau of Business Research and Dean of the School of Business Administration.

My college training consisted in attending Albion
5332 College, where I received my A. B. degree, two years at the University of Illinois, one year at Johns Hopkins. I received my Ph.D. degree from the University of Illinois in 1918.

I began teaching economics at Dartmouth College in 1916. I taught at Dartmouth for one year and I then became an instructor in economics at Johns Hopkins during the year 1917-'18.

After receiving my Doctor's degree, I became associated with the Statistics Branch of the General Staff in the War Department in Washington. Then with the Central Bureau of Planning and Statistics, and later with the United States Shipping Board.

Following 1919, I went to the University of Michigan and was associate professor of commerce and industry in the Department of Economics. In 1924 I became associated with the School of Business Administration which had just then been founded at the University of Michigan. My position at that time was professor of marketing, a position which I still hold. In 1927, in addition to my teaching position, I became Acting Dean of the School of Business Administration and in 1929 the Dean of that School.

For a time after 1919, I taught various subjects at the University of Michigan, including Business Organization and Management, Marketing, and Foreign Trade. Since
1924 I have confined myself to marketing, sales ad-
5333 ministration, market analysis and general administrative work.

In the course of my work I have published various articles on economic subjects. For some years I was a member and a director of the Business Research Council until it was dissolved about a year ago. I also served for several years as a committee member of the Social Science

Research Council. I am chairman of the Research Committee of the American Association of Collegiate Schools of Business and a member of the American Marketing Association and of the American Economic Association.

Mr. Robison: I tender the witness as an expert in the field of economics.

Trial Examiner Norwood: Dr. Griffin is accepted as an expert economist in the fields set out there by his qualifications.

Now, I want to put it on the record here that I am not going to let this expert testimony be cumulative or excessive.

Mr. MacIntyre: Well—

Mr. Robison: Well, I will say, Mr. Examiner, that there is no desire on our part to make any such testimony excessive. Whether there may be an agreement between us as to whether or not it is cumulative and whether or not if cumulative it is essential and important to the pres-
5334 entation of our defense in this case, I think that we—that you should now undertake to limit our examination concerning any phase of the economic part of this case to the testimony of one witness or two witnesses.

Trial Examiner Norwood: I am not going to cite any number of witnesses. I just simply wanted to give you notice so that you don't go to a great deal of trouble and expense expecting for us to hear economic testimony to the extent that we did in the previous case.

Now, we are not going to do it. It isn't necessary to cover all those points two or three times, and just now I can't imagine anything that would be necessary over and above what two of our expert leading economists in the country can tell us about this one subject. I am not deciding that beforehand. I will decide those questions as they come up, as to whether they are cumulative or not, but I simply wanted to put you on notice so that you will not be disappointed.

Mr. MacIntyre: If Your Honor please, I would object to any unlimited continuation of the presentation of testimony by expert economists in the case, whether it is cumulative or not. In other words, when the principal features of this case have been covered by the Respondents, in so far as they contend them to be their principal features, by expert economic testimony, I think that then they have reached the proper limit and should not go beyond that.

The matter of taking every detail and covering it
5335 by—that might possibly be involved under the case, under one theory or another, and covering it by expert economic testimony, is unjustified, in my opinion, because then if the opposite side of the question is to be—that is, the opposite side of the question is to utilize any facilities in meeting that, we could go on for weeks and weeks and weeks in an effort to do so.

Trial Examiner Norwood: Proceed.

Mr. Robison: I think we can cross our bridges when we come to them.

Trial Examiner Norwood: Yes. Proceed.

By Mr. Robison:

Q. Professor Griffin, in your studies and in your teaching, have you given special attention to the subject of marketing and the pricing of merchandise?

A. Yes, I have.

Q. Have you in your studies in economics given special attention to the study of the basing-point method of quoting and determining prices of merchandise?

A. Yes, sir.

Q. What is your understanding of the term "price"?

A. The term "price" when not qualified or modified means to me an amount of money which is actually paid by a buyer to a seller for a product or service or a bundle of products and services.

5336 Q. Does the term "price" necessarily have to be qualified to be meaningful?

A. In some cases; yes, sir. For example, it is sometimes used to mean an asked price. In that case that would have to be so indicated. Or bid price and offered price. Sometimes to make the meaning clear it might be called an effective price. That is what I would—the latter is the one that I would understand if the term were used without qualification. Then also it may have to be qualified to indicate just what is being delivered, that is, what is being sold, and, of course, one of the significant considerations in that connection at times is the place where the product is to be delivered, and so you could have a delivered price or otherwise.

Q. In the economic sense, does "price" have any meaning unless there is a definite understanding as to where the seller is to deliver the merchandise?

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A. No. I do not see how it could have any meaning unless there were a definite understanding, expressed or implied, as to where the product is to be delivered, because the—what is being delivered is, as I said before, a bundle of goods and services and a product, for example, a bag of sugar or bag of cement, or whatever it may be, is one thing at one place and another thing at another place.

Q. From the standpoint of economic theory, what
5337 is the relation of cost of product to price?

Mr. MacIntyre: That is objected to. It is irrelevant and immaterial to the issues in this case.

Trial Examiner Norwood: Objection overruled.

A. Cost does not, in my judgment, have the direct relation to price in the sense that cost can be said to determine price. It is true that costs of production may have a bearing upon supply of products and that in turn will have an effect—or may have an effect upon price. But one cannot say, I think, that price is simply the summation of a number of costs. They are two different things. One is influenced by the other, but price is not derived directly as the summation of the various costs.

By Mr. Robison:

Q. You spoke of costs of production. From an economic standpoint, what does cost of production include?

Mr. MacIntyre: Well, I object to that as duplicating testimony of a previous witness, expert economic witness, called by the Respondents.

Trial Examiner Norwood: Objection overruled.

A. Well, cost of production includes a number of obvious things, such as the cost of raw material, labor, and so on, and then it includes some that might not be regarded as so obvious, such as the cost of transportation to put the thing to the—the product in the place where it is to be
5338 delivered, and cost of storage and—in other words, all of the costs that are accumulated up—are necessary in order to turn over to the buyer the things that the buyer is buying and the seller is selling.

Q. Well, when you say "to turn over to the buyer" you mean to turn over to the buyer at the point of delivery?

A. Obviously, yes.

Q. What governs demand?

A. Demand is governed in the most basic sense by human desires and the effort to satisfy those desires. Effective demand really means the number of units of a

product that will be taken at a given price, and that is influenced by these desires and by the limited purchasing power that individuals have and the competition of other desires.

Now, when one speaks of industrial goods, you could put it a little differently, or not inconsistent with the other statement; that is, that demand for industrial goods arises from the profit-making possibilities of those goods. In the last analysis, however, in either case it goes back to the ability of the—the capability of the product to satisfy the human desires directly or indirectly.

Q. When you use the term "industrial use"—I think the term was "industrial goods"—will you explain what you meant by that?

A. I mean by "industrial goods," goods that are
5339 not used for—are not used for immediate consumption. That is, as distinguished from so-called consumers' goods, which would be chewing gum and tobacco, and, on the other hand, there are goods that are bought by people who are in turn going to sell them or use them in connection with some product that is to be sold to somebody else.

Q. And that may be so used in the production of a new product? Does that—

A. Oh, yes. Yes, sir.

Q. Do desires for merchandise arise spontaneously in the minds of potential buyers?

Mr. MacIntyre: I object.

A. No.

Mr. MacIntyre: We are getting into a field that is irrelevant and immaterial to the issues in the case.

Trial Examiner Norwood: I am inclined to think so. I think that you should proceed directly to apply any economic principle to the facts and circumstances and conditions shown to exist in this case, and—

Mr. Robison: I will withdraw that question.

Trial Examiner Norwood: —and the things he is relating here are things which every Commissioner knows and everyone that has any connection with the case. We can just skip it.

Go ahead.

5340 By Mr. Robison:

Q. As an economist, Professor Griffin, what do you understand by the term "competition"?

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A. I understand the term "competition" to mean rivalry of the people of anyone economic group for the patronage of those of another economic group.

For example, it would be the rivalry of retailers for the patronage of their consumers, the rivalry of manufacturers for the patronage of retailers.

Trial Examiner Norwood: Rivalry as between themselves?

The Witness: That is correct; yes, sir. I was just going to add that it should not be used—I think sometimes is incorrectly used—to refer to the relations between the people in the two different groups. It is not a rivalry between the buyers and sellers. That is a bargaining relationship and not a relationship of rivalry.

By Mr. Robison:

Q. What is price competition?

A. To answer that requires just a little further statement about the nature of competition. This rivalry that I speak of takes the form of an effort on the part of sellers to offer an attractive bargain. Now, an attractive bargain is the resultant of two things: What is offered on the one side and what is asked for it on the other side. Now,
5341 when the thing which is offered remains constant and is the same for a number of different people, then the only variable may be the amount asked, and the term "price competition" has some usefulness to describe that situation, but it seems to me quite clear that what the buyer is interested in is the relationship between what is offered and what is asked, and, therefore, logically there is no significant difference, I believe, between competition that takes the form of varying one side of this equation as against competition that takes the form of varying the other side of this equation.

Q. As sellers seek to rival each other in stressing particular qualities of their respective products, in assuring prospective customers of the uniformity and dependability and the quality of their products, and emphasizing punctuality in delivery and other services, even though the sellers are quoting the same prices, is that real competition?

Mr. MacIntyre: I object. It is a matter—

Trial Examiner Norwood: I don't think you have to lead this witness.

Mr. MacIntyre: It is objected to because it is leading. It is objected to because it is duplicating testimony that has been given for the Respondents through another expert, and for other reasons as well.

Trial Examiner Norwood: I hope you will not let anything I said lead you to think that he can't duplicate
5342 it. Cumulative evidence is objectionable, but if he wants to show the same thing by two witnesses he may do so. But it is leading.

I will ask the counsel not to lead him in any future question, but I will overrule the objection on this, and he may answer.

Mr. Robison: Do you wish the question read?

The Witness: Just the final part of the question. I heard the first part.

(Question read as follows:

"* * * Is that real competition"?)

A. Yes, consistent with the statement that I made just a moment ago, that economic competition deals with the relation between what is offered and what is asked. It is naturally a competitive act and competitive attitude to try to enhance the buyer's estimation of the thing which is offered or to try to provide more services and—such as reputation for dependability and all of those things enter into the—or have a bearing upon the attractiveness of the bargain that the seller is trying to offer to the buyers, and is, therefore, I think, quite clearly competitive.

Trial Examiner Norwood: Well, you say that is price competition?

The Witness: No, that was not the question, I believe. That is competition; yes, sir.

5343 And then I did point out a moment ago, Your Honor, that I think there is no logical difference between price competition and any other kind of competition.

By Mr. Robison:

Q. Does emphasis on the quality of the product and the services offered and rendered by sellers carry any implication as to whether or not the price is high?

A. No. If it did that would be equivalent to saying that it was never possible to find one bargain better than another. That is, if better quality—better service, and so on, is always accompanied by higher price and vice versa, then there would be no difference in bargains, which just doesn't check with common observation.

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Q. When sellers rival each other in stressing appeals other than price, does that indicate to you, as an economist, that the buyers are being misled or imposed on?

Mr. MacIntyre: I object. It is not only leading but objectionable on other grounds which are obvious.

Trial Examiner Norwood: Well, I think that is a rather vague sort of a question. I don't see how it is—I don't see its relevancy.

Read the question.

Trial Examiner Norwood: Objection sustained.

By Mr. Robison:

5344 Q. Is rivalry among sellers in expressing appeals other than price, in your opinion as an economist, a natural competitive procedure or not?

A. I think it is a natural competitive procedure. Obviously a person making a bargain would like to have that bargain appear to be a good bargain, and naturally he will try to enhance the estimation—the buyer's estimation of the value to him of the thing which is being offered. I think it is clearly a competitive attitude and act.

Q. What is a market in the economic sense?

A. The term "market" is used in a number of different senses, and frequently the meaning has to be drawn from the context in which the word is used.

You may use the word "market" to—as, for example, we might speak of the wool market, meaning there, I should think, with no other qualifications, the general complex of forces of supply and demand that give rise to the price level in the case of wool.

Or, on the other hand, you may speak of the market as being at a particular place, as, for example, one might say that the securities market is in New York.

In any event—well, I think that is as far as one can go in talking about the term "market" in general.

Q. When the term "market" is used referring to a place, state whether or not it implies to you a place
5345 where buyers and sellers meet.

Mr. MacIntyre: I object to that. It is leading.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I think he may answer that. Objection overruled.

A. Yes.

By Mr. Robison:

Q. Is a market in the economic sense necessarily the place where negotiations between buyers and sellers take place?

Mr. MacIntyre: That is objected to, for the same reason I objected to the last question.

It is not necessary for counsel to lead an expert witness of this kind just constantly on small elemental things and then lead him into a big vital issue from his point of view.

Trial Examiner Norwood: Counsel's point is well taken.

Mr. MacIntyre: Little things make big things.

Trial Examiner Norwood: On subjects like this it is very difficult not to specify the subject of desired testimony much more particularly than—

Mr. MacIntyre: But, if Your Honor, please, when he asked for the definition of a market, if he expected then that the witness were to give him what a market is in all of
5346 its different aspects, he should have given it rather than lead him on this little aspect, that little aspect, and the other aspect until he gets the mountain built up as the counsel would like the witness to build it, rather than let the witness build it in the first instance from a general definition.

Trial Examiner Norwood: I will ask the counsel as far as he can to—

Mr. Robison: Of course, Mr. Examiner—

Trial Examiner Norwood: —let the witness give the testimony.

Mr. Robison: Yes, that is my intention. I can easily rephrase each of these questions so that they will not be subject to even suspicion of being leading, but, as Mr. MacIntyre has indicated, these are more or less elementary matters that we are covering at the moment, and I was trying to save time, in some cases perhaps by using somewhat leading questions.

Trial Examiner Norwood: I think so.

Mr. MacIntyre: But the combination of them makes something more vital than elementary.

Trial Examiner Norwood: Objection overruled. Go ahead.

5347 Mr. Robison: Do you wish the question read?

The Witness: I am just trying to get it in mind. Yes, perhaps you had better read it.

Trial Examiner Norwood: Read it.

(Question read.)

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A. No.

A simple illustration, I think, will make that clear.

An insurance salesman comes into my office and sells me an insurance policy. There has been an offer and an acceptance, and the terms no doubt have been affected by innumerable other offers and acceptances being made throughout the country. One would hardly call my office the market place for insurance.

By Mr. Robison:

Q. What is the relation between "market" and "price"?

A. "Market", when used in that general sense, to my mind represents that complex of the forces of demand and of competition from which price emerges.

Q. May a manufacturing company seek to sell similar merchandise simultaneously in more than one market?

A. Yes.

Q. Can you illustrate any conditions under which
5348 a manufacturing company might seek to sell similar merchandise simultaneously in more than one market?

A. Yes.

In the effort to get complete—greater utilization of plant, it might be regarded by a manufacturer highly desirable that he should reach out beyond the market that he might think of as being his natural market, that is, in the sense of being his immediately contiguous market. He may also do that because of variations in the demands in various markets, and sometimes those—the demand in the market near to his place of business might be off, and the demand larger at some other market, and that would, of course, justify him in selling to those other markets. And if that sort of thing—if he anticipates that that sort of thing is going to go on, then that might provide a basis for his judgment that it would be wise to try to maintain continuous contacts with those other markets. So he would be following normal business prudence in maintaining contact with several different markets and selling at several different markets.

Q. If a manufacturer seeks to sell similar merchandise simultaneously in two or more markets under competitive economic conditions, would you expect the company necessarily to receive the same net amount per unit for sales in each market?

Mr. MacIntyre: That is objected to. It does not call for a statement of economic theory, or application of
5349 economic theory, but rather it calls for a statement of psychology of the operators, who are the sellers, as to what they would do.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: It is speculation that is called for.

(Question read.)

Trial Examiner Norwood: As an economist, would you expect him to do that? Is that what you mean?

Mr. Robison: I did not hear what you said?

Trial Examiner Norwood: You mean under the operation of economic law would he ordinarily sell at the same price or not?

Mr. Robison: Yes, that was involved in the question; if he, as an economist, would expect the same price to be received in different markets.

Mr. MacIntyre: If Your Honor please, the question does not call for a statement of economic theory. There is an economic theory of differences as to prices. It does not call for that. It calls for this man to state what he considers a seller would do.

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. I would not consider that manufacturers under competitive conditions selling in different markets would
5350 necessarily receive the same net return on the sales to all of the markets. There are plenty of examples throughout industry, industries that are commonly regarded as competitive industries, in which that is not true.

By Mr. Robison:

Q. When you say "that is not true," do you mean it is not true that they would receive the same net price?

A. It is true that they might well be receiving, and are receiving, different net returns.

Trial Examiner Norwood: You mean that would be under competitive conditions?

The Witness: Yes.

By Mr. Robison:

Q. In order to have a true market in an economic sense, is it necessary for buyers and sellers to assemble at one spot to carry on negotiations?

A. No. It is not necessary—if I may add, it is not necessary that they should assemble at one given place.

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Q. In your experience as an economist and in con-
5351 nection with your studies, Professor Griffin, have you made any observations and any studies concerning the extent to which manufactured goods are sold in the United States at market places in which buyers and sellers assemble in one spot and carry on negotiations?

5352 A. I have been studying and teaching the subject of marketing for over 20 years, and I naturally had occasion to observe the different methods of marketing used by different manufacturing industries in the United States. I cannot say that I have made a specific study that would enable me to state in any quantitative terms such as a certain percentage of manufactured goods that are sold in that way, but I certainly have arrived at a conclusion, and I shall be glad to give it, if you care.

Q. Now, based on your observations and studies in that field of economics, will you tell us to what extent manufactured goods sold in the United States are sold in the United States at market prices in which buyers and sellers assemble in one spot and carry on negotiations?

A. Well, to a very small extent. That is not the typical or common method of distribution or marketing of manufactured goods.

I think, for example, of an instance in which something like that is done in the furniture market, furniture expositions at Grand Rapids, but that method of marketing is not characteristic of the marketing methods used by manufacturers generally in the country. I should say it was rare.

Q. In an economic sense, what purpose, if any, is served by the use of the concept of a market as a spot where buyers and sellers assemble to carry on negotiations?

5353 A. It is thought by students of economics that that provides a simple illustration of the interplay of supply and demand without a number of disturbing factors being present. From those forces of supply and demand one can deduce the prices that would be derived.

It is something—to the economist, it is something like the concept of a perfect vacuum to the physicist when he is dealing with the laws of the pendulum, let us say.

Q. Is the concept of a market as a spot where buyers and sellers assemble to carry on negotiations an ideal to which genuine markets are expected to conform?

Mr. MacIntyre: Now, it is not necessary to lead the witness that way.

Trial Examiner Norwood: Objection overruled.

A. No, that would not be expected.

By Mr. Robison:

Q. From your experience and studies in economics, what is your understanding as to the procedure by which the negotiations for the sale of manufactured goods commonly are carried on in the United States?

Mr. MacIntyre: I object to that. There has been no foundation laid for it.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: As to its competency.

(Question read.)

5354 Trial Examiner Norwood: Objection overruled.

A. There are a number of methods used by manufacturers in carrying on negotiations for the sale of their manufactured goods, but I should say the most common one is the use of the manufacturers' salesmen, traveling salesmen.

By Mr. Robison:

Q. State whether or not, in the case where negotiations for sellers are handled by traveling salesmen, that indicates that the market is not a genuine market in an economic sense.

Mr. MacIntyre: I object to that, because we do not have an issue in this case concerning the manufacturers' use of salesmen. It is irrelevant and immaterial.

I object to all other questions on the line dealing with the employment of salesmen for the same reason.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection sustained.

(Whereupon, at 12:20 o'clock p. m., a recess was taken until 1 o'clock p. m. of the same day.)

5355 **Afternoon Session.**

1 P. M.

Trial Examiner Norwood: Dr. Griffin will resume the stand.

Proceed.

CLARE E. GRIFFIN resumed the stand and testified further as follows:

Mr. Robison: Mr. Examiner, I would just like to say this on the record, with your approval, that I had intended to ask further questions of this witness dealing with the general matter of the economic aspects of the use of traveling salesmen in carrying on business in manufactured commodities in general, and in business in the rigid steel conduit industry in particular; that in a discussion we had off the record you have suggested that further questions along that line to be unnecessary, basing your suggestion, in part, as I understood it from your statement, that the Commission was entirely familiar with such matters, and in view of that suggestion I am going to refrain from asking further questions that I was going to ask.

Trial Examiner Norwood: Yes, and the counsel will have the benefit of his exception, which he may take to my last ruling, which will make him perfectly safe.

Proceed.

5356 By Mr. Robison:

Q. Professor Griffin, I am now going to ask you a hypothetical question. I shall a little later ask you other hypothetical questions, and inasmuch as this is the first of such questions, I shall call it and hereafter refer to it as hypothetical question A. In answering hypothetical question A I wish you to assume facts which have already been put into the record in this proceeding in connection with a similar question asked of the last preceding witness, and which have in previous parts of this record been repeatedly referred to as the statement of facts assumed in hypothetical question A, and of that statement of facts I now show you a copy (handing to the witness).

Trial Examiner Norwood: Now, did you want to cite the record where that appears?

Mr. Robison: Yes. I will be able to in a few minutes, I think. I haven't the record here.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

By Mr. Robison:

Q. I ask you, first, by way of introduction, Profes-
5357 sor Griffin, whether you are familiar with the statement of facts that I have referred to and of which I have handed you a copy.

A. I am.

Q. Now, with those facts in mind, I ask you to answer this question: In your opinion as an economist, on the facts assumed in that statement, could such a marketing plan as is there set forth logically develop and continue to exist in an industry where competition prevails?

Mr. MacIntyre: I object to that in the same way that I objected to—that is, I make the same objection to that as I made to the question as it appears in the record and stated between pages 4902 to 4913, and more particularly as my objection is stated immediately following that place in the record and further specified between pages 4918 to 4925, inclusive.

Trial Examiner Norwood: Objection overruled.

The Witness: Will you read the question, just the question part?

(Question read.)

A. Yes.

By Mr. Robison:

Q. What conditions and characteristics of an industry would lead naturally, in your opinion as an economist, to the adoption of a basing-point method of quoting prices?

A. I can recognize several factors that would be
5358 favorable when found in an industry, to the existence, development of a basing-point method. There are certain characteristics of the product which contribute to that, in the first place, a standardized product or homogeneous product; second, a product that is bulky, or perhaps more accurately to say that it—a product in which transportation costs are of some significance but at the same time not of such great burden that goods would not be transported over a considerable distance.

Then there are certain factors relative to the producers: If there are relatively few producers, if these producers are independently owned, if they are scattered, that is, located variously relative to markets; if they operate with some degree of fixed costs or overhead costs, and then there is a characteristic of demand which tends in the same direction, that is, inelasticity of demand.

Those factors, taken in combination, would be favorable, in my judgment, to the development of that method of pricing.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

By Mr. Robison:

Q. Will you explain, Professor Griffin, how a standardized product may favor the use of a basing-point method?

A. Yes. The—at least by the reverse you can say that if a product were not standardized, then, while you
5359 might get some of the characteristics and some similarities to a genuine basing-point method, I do not think you would get such a method as it is usually understood. That is, even with unstandardized products you may have a degree of freight absorption, that is, of price concessions at different places to meet competition, but with an unstandardized product that would not be worked out in any very precise way because the products being sold aren't directly comparable.

Mr. MacIntyre: May we go off the record for a moment?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. MacIntyre: All right. Thank you.

Trial Examiner Norwood: Proceed.

By Mr. Robison:

Q. How may the transportation factor favor the use of a basing-point method of selling?

A. I mentioned that factor because if a product—if a product is so light and easily transported that transportation cost is a matter of no great importance, then I would expect to find either a uniform f.o.b. plan or uniform delivered prices, and one could not say which, and "because" would not make much difference one way or the other. I am thinking of such products as small toilet articles and jewelry and things of that kind.

5360 If, on the other hand, the product is so difficult to transport, that is, its cost of transportation relative to its value is so high as to make it commercially impracticable to transport it any distance as, for example, let us suppose, sand and gravel, then I would expect to find purely local market areas around each mill, and then you would not find this system developing, this method.

Q. How may the number of producers favor the use of a basing-point method?

A. If there were a very large number of producers, that is, if we might say an infinitely large number of producers, to such an extent that no one of them needed to pay attention to the effect of his own actions upon the market in which he were functioning, then I think you would have a different pattern, different method of pricing than this. On the other hand, the other extreme, if you found only one producer, then I don't think that you would find this method.

So a relatively few, such a number of producers as will lead each one to a recognition of the fact that what he does has a bearing on what his competitors are going to do, would be a favoring characteristic of this method.

Q. What bearing does the location of producers have on the development of a basing-point method?

A. I have said that a favorable factor for the development of this method would be producers variously
5361 located relative to markets. Now, if that were not true, if all of the producers of a given product were located in one town or in one small producing area, and they were selling over the whole country, then I think it would be unlikely that this method would develop. Rather, that you would there have a pretty close approximation to a uniform f.o.b. plan, possibly with some deviations being made because of elasticity of demand out in the most distant points, but you would not get a method of this kind.

Q. What is the relation of independent ownership of plant to the development of a basing-point method?

A. Well, again, I would approach it from the opposite and say that if you did not have independent ownership—rather, if all of the plants were owned by one company—then I would suppose that that one company would direct that the goods to be delivered at any point of use would be sent always from the nearest point of production.

Q. The nearest freightwise?

A. Yes; nearest freightwise. This method grows out—in order to have this method it seems to me that you must have a degree of independence of ownership and of action on the part of these producers who are variously located relative to the market.

Q. What bearing do overhead costs have on the development of a basing-point method?

5362 A. I—

Mr. MacIntyre: I object to that question on the ground that there has been no foundation laid to show that this witness has any knowledge of what effect various elements of cost have had in various industries where basing-point systems are now used, in their adoption of that system; and until there is a showing that he has a factual direct knowledge of that, he has not been shown to be competent to answer the question.

Trial Examiner Norwood: Objection overruled. He has gone into that several times.

A. I include this factor of fixed or overhead costs because I believe the presence of those costs would be favorable to the adoption and use and development of such a method. Theoretically, it is not an essential point, but theoretically also it is a point that is favorable, and for this reason: That it is the presence of overhead costs or fixed costs that is one of the factors creating the urge for volume in many American industries, and it is that urge for volume that encourages a manufacturer to reach out into distant markets and search out those volumes.

Trial Examiner Norwood: You mean, then, that the overhead—the condition to which you refer is one in which the overhead in a given plant is fairly uniform and not the overhead as between the competitors?

5363 How is that?

The Witness: Oh, I am certainly referring to the individual plant, but I was not intending, Your Honor, to say that it was uniform. I am simply saying that if an industry is one that has considerable amount of fixed costs, then that very fact places pressure upon the particular manufacturer to strive to get full volume, and that that pressure is greater than it would be if the industry were one that were characterized almost completely by direct costs.

By Mr. Robison:

Q. Will you tell us what you mean by "fixed costs" in the connection which you have used there?

A. I mean by "fixed costs" costs that do not vary directly with the volume of output. May I add to that that there are degrees, of course, of fixity and directness, I suppose you could say. Some costs vary almost precisely with the number of units that you produce, and some costs vary hardly at all with the number of units that you produce, and then you have all sorts of variations in between.

Q. Well, when you refer to—in using the term "fixed costs," as you have used it, you are using the term "costs" with reference to total costs of operation of the plant as distinguished from costs per unit of production; are you not?

A. Yes.

Q. How does inelasticity of demand bear on the
5364 development of the basing-point method?

A. In this way, I think: That if the demand for a product were highly elastic, that is to say, if it would respond sharply and substantially to a relatively small reduction in price, then there would be more of a tendency for a manufacturer to try to get this increased volume, which I referred to a moment ago, by lowering the price in his contiguous market.

When that demand is relatively inelastic, then the alternative of reaching out in more distant markets appears to him to be a more attractive alternative and a more promising one.

Q. In your opinion, from the facts assumed in hypothetical question A, do the conditions which logically would lead to the use of a basing-point method prevail in the rigid conduit industry?

5365 The Witness: Answer the question?

5366 A. Yes.

Trial Examiner Norwood: In other words, you think that this hypothetical statement is descriptive of these seven conditions there?

The Witness: I think that this—that the seven conditions which I have described are—

Trial Examiner Norwood: Indicated—

The Witness: —indicated in the hypothetical question.

Trial Examiner Norwood: Thank you.

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By Mr. Robison:

Q. Is the basing-point method substantially one that you, as an economist, would recognize as a competitive method of pricing and selling merchandise?

Mr. MacIntyre: I object. That does not call for a statement of economic theory. It calls for a conclusion, which is no more than if a conclusion were asked of any one person, and it is not advisory on economic theory at all.

Trial Examiner Norwood: No. I think he is asking for an appraisal of the facts there.

Mr. Robison: No; I am not asking about the system as it is assumed to be in use in the statement of facts by the hypothetical question.

Trial Examiner Norwood: No.

Mr. Robison: I am asking him a general question,
5367 whether, in his opinion, as an economist, the basing-point method is substantially one that he would recognize as a competitive method of pricing and selling merchandise.

Trial Examiner Norwood: You said "as employed in the rigid steel conduit business."

Mr. Robison: No. I beg your pardon. Will you have the question read?

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Well, objection overruled. He can tell us that.

A. I believe that the basing-point method of pricing is entirely consistent with competition and may well be a competitive—

Trial Examiner Norwood: You are perfectly familiar, then, with this basing-point method; are you?

The Witness: In general?

Trial Examiner Norwood: Yes.

The Witness: Yes, sir.

Trial Examiner Norwood: With all the economic features of it?

The Witness: With the basing-point method in general.

Trial Examiner Norwood: Yes.

The Witness: Yes, I am.

5368 By Mr. Robison:

Q. According to any business behavior observed by you as an economist, could the use of such a method arise naturally as a result of competitive forces?

Mr. MacIntyre: I object. There has been no foundation laid to show that this witness has any direct factual knowledge that any basing-point system has ever arisen anywhere except—I mean by—strike the word "except"—by competitive forces or naturally or logically, and until that foundation is laid I insist that this witness has not been shown to be competent to answer the pending question, because how can he say that a cow is white or could be white unless he had ever seen a white cow?

Trial Examiner Norwood: I think possibly we have had one.

Mr. Robison: I have forgotten which one of the famous philosophers it was that made the famous remark that in the night all cows are dark—or black.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: I will sustain the objection to this last question until you—

Mr. MacIntyre: And the answer to the previous question stands?

Trial Examiner Norwood: Well, you can put your 5369 motion on the record to strike that—

Mr. MacIntyre: Well, I do so move to strike that answer at this time.

Trial Examiner Norwood: —answer to the previous question.

I will reserve the ruling on that to see if the grounds are laid for it—see whether grounds may be laid for it.

By Mr. Robison:

Q. Professor Griffin, what do you understand to be a basing-point method of quoting prices?

A. I should say a basing-point method exists when manufacturers determine prices on some of their sales by reference to a base price other than their own—other than the price at their own point of manufacture.

Mr. Robison: May I have the last few words of that read? I am not sure I caught them all.

Trial Examiner Norwood: Yes. Read it.

(Answer read.)

Trial Examiner Norwood: Go ahead.

Mr. Robison: May I have it read again?

Trial Examiner Norwood: Yes. Read the question and answer.

(Question and answer read.)

By Mr. Robison:

5370 Q. Now, I ask, Professor Griffin, whether, according to any business behavior observed by you, as an economist, the use of a method such as you have described in giving your description of a basing-point method could arise naturally as a result of competitive forces.

Mr. MacIntyre: I object. There has been no foundation laid to show that this witness is competent to answer that question in that it has not been shown that he has ever secured factual knowledge as to how basing-point systems have come into use in any one industry.

Trial Examiner Norwood: You have just described the basing-point system about which he is asked to testify, and I will ask him to testify with respect to that only, and none other.

I will overrule the objection.

Do you want the question read, Doctor?

The Witness: I think I understand it.

A. I understand I am to answer this from the—based on my observations of business behavior.

I cannot say that I can answer it on any factual knowledge as to how particular basing-point methods have arisen, but I can say that, from my observation of the way business men do reason and react to competitive situations, that I believe that a method of this kind might very well develop as a result of normal individual competitive behavior.

5371 Mr. MacIntyre: Well, I move to strike the answer on the showing of the answer itself that the witness is not competent.

Trial Examiner Norwood: Motion denied.

By Mr. Robison:

Q. In order to have such a method used, in your opinion, would certain of the elements have to be planned in concert with other manufacturers or sellers?

Mr. MacIntyre: I object to that.

Trial Examiner Norwood: Objection sustained.

By Mr. Robison:

Q. Professor Griffin, will you state whether or not, in your opinion, in order to have such a method of quoting and selling used, it would be necessary that certain elements of the method be planned in concert with other manufacturers or sellers?

Mr. MacIntyre: I object. It is the same question.

Trial Examiner Norwood: Objection overruled.

Answer.

A. I do not think it would be necessary to have any elements of such a plan—such a method developed in concert.

Is that an answer to the question as stated?

If you will read the question, I will see if that is an answer.

Trial Examiner Norwood: Read it.

(Question read.)

5372 Mr. Robison: Do you wish the answer read?

Trial Examiner Norwood: Read the answer.

The Witness: My answer is "no."

By Mr. Robison:

Q. Will you state whether or not, in your opinion, in order to have such a method continue in operation after it has once come into general use, some disciplinary machinery would be required?

Mr. MacIntyre: I object. It is an important question.

Trial Examiner Norwood: Overruled.

A. I do not think that would be necessary.

By Mr. Robison:

Q. On the facts assumed in hypothetical question A, in your opinion as an economist, is each conduit manufacturing company selling in a single market or in several markets?

A. I would say that they were selling in several markets, recognizing, of course, that these markets are mostly related one to the other.

Q. And why do you say several markets?

A. Because some of the—well, in the first place, because products are being delivered at these different markets, and prices are being agreed upon in these different places, which I will regard as markets here; in the second place, that some of the forces that operate in a market lead-

5373 ing to a determination of price are different in one of these markets from another. Competitive forces, for example, are different at the different points of delivery.

Q. Where the commodity referred to in the statement of facts, hypothetical question A, is sold in areas separated from each other, and not constituting the same market, do you consider that the product sold in toto is the same in each of those areas or markets?

Mr. MacIntyre: I object to that. It is not necessary for the counsel to continue leading the witness this way. He states the testimony and the witness need only affirm it, "yes," or deny it, "no."

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: How could you find a more suggestive question than that!

Trial Examiner Norwood: It is a very difficult thing to get this opinion evidence without making your questions connotative.

Mr. Robison: I would be very glad to reframe it.

Mr. MacIntyre: Well, when you put in "whether or not" it certainly does not change the statement.

Trial Examiner Norwood: I think I have explained my position on this this morning. I will ask the counsel to avoid leading questions as much as he can.

5374 Mr. Robison: I am trying to do so.

Trial Examiner Norwood: Yes.

Well, I shall let him answer this one.

Objection overruled.

A. I should say that, while the product in the physical sense may be the same thing at different points, that the thing that is being delivered is different. It is clear that a pound of sugar in one place is a different thing valuewise than it is another place.

And that is, incidentally, if I may add, another reason for really regarding these as different markets, because you have different things being sold.

By Mr. Robison:

Q. If we assume that the demand for conduit fluctuates irregularly as between various local markets, what is your opinion as to whether or not there is a gain to a manufacturer in the industry in having ready access to numerous markets?

A. It is quite clear that a manufacturer is likely to gain a degree of stability in his demand if he can sell in a number of markets. It is the principle of not having all your eggs in one basket, or the principle of large numbers that tends to create the stability of demand, and—well, that is the answer.

Q. In order to be in a position to compete for a share of the business when demand springs up in a particu-

5375 lar market under the conditions assumed in hypothetical question A, what marketing arrangements would appear to you, as an economist, to be necessary for the manufacturing company?

A. Well, I think that manufacturers have got to maintain a continuous contact with the market. People sometimes speak I think quite unrealistically of a manufacturer simply rushing into a market at a particular time when the price conditions and his own needs would dictate that, but I think any realistic view of the way business is carried on will show that a manufacturer has got to have some continuing contact; he must have contact with his dealers; he must have established a reputation in that market for fair dealings; he must have looked up the credit standing of the people to whom he is going to sell; and they must have an opportunity to form some opinion of him. All of those things go in under this general head of established business conditions.

Does that answer the question?

Q. That, I think, answers the question, but I want to ask you this by way of asking for an explanation: I notice you used the term "the market" in two or more places throughout that answer. Were you using that in a generic sense intending it to have reference to various markets in which a manufacturer—

A. Yes.

Q. —might seek to sell?

A. Yes.

5376 Mr. Robison: May I have the last question read?

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: We will have a five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. Robison:

Q. Professor Griffin, in your view as an economist, what, if any, advantages are there to manufacturers of rigid conduit to have and maintain contacts in various markets?

Mr. MacIntyre: That is objected to as calling for irrelevant and immaterial matter. It is too remote to the issues.

Trial Examiner Norwood: You are asking him a factual question now based on his actual knowledge of the market.

Mr. Robison: I am asking him for an opinion.

Will you read my question, please?
(Question read.)
Trial Examiner Norwood: Objection overruled.
Go ahead.
A. From the point of view of an individual manufacturer there is an advantage in possibly being able to increase the total amount of business of his plant and thus coming closer to complete utilization of his plant; and,
5377 furthermore, there is the advantage of getting a diversified market, which will tend to give a degree of stability to the demand for his product, so that he will not be so greatly dependent upon the fluctuations—upon the demand for any one market, which, of course, might fluctuate.

By Mr. Robison:

Q. Will you state whether or not, in your opinion as an economist, under the conditions assumed in hypothetical question A, it would be practicable for the manufacturing company to instruct its salesmen to quote the same price f.o.b. its manufacturing plant?
Mr. MacIntyre: That is objected to. There has been no foundation laid to show that this witness is competent to answer that question.
Trial Examiner Norwood: Read it.
(Question read.)
Trial Examiner Norwood: Objection overruled.
A. No, I don't think it would.

By Mr. Robison:

Q. Will you tell us why you do not think so?
A. For the reasons—for the reason that competitive conditions vary in the different markets, or would likely vary in the different markets, in which you are trying to sell, and that those varying conditions require, if you want to sell in those markets, concessions from a uniform—
5378 from a regular f.o.b. price that might be given to the salesmen; that is, it would require such concessions if the manufacturer wanted to sell in those particular markets. Of course, he has the option of not selling. As I explained before, it is an advantage to him in trying to sell—or at least he might regard it as an advantage.
Q. Under the conditions assumed in hypothetical question A, if a conduit manufacturing company cannot instruct all its salesmen to quote the same price f.o.b. its manufac-

turing plant without thereby risking a loss of sales, then, in your opinion as an economist, what form or forms of price quotation can be used in issuing instructions to salesmen which recognize the necessary variations between markets?

Mr. MacIntyre: I object to that. It calls for incompetent, irrelevant, and immaterial testimony. There has been no foundation laid for it in this question to this witness.

Trial Examiner Norwood: Objection overruled.

Answer.

Do you want the question read?

A. Dealing with an industry, as we are here, in which the product is standardized, homogeneous, the principal variations in these competitive conditions to which I referred in my last answer arise out of the location of the particular markets relative to other producing plants
5379 and the freight charges from those other plants or points. Under those circumstances, it would seem to me to be a reasonable method for a manufacturer to instruct its salesmen to charge a price made up of the—of a mill price, or base price, if you wish, of this particular manufacturer plus freight, or the base price—some other base price plus the freight from that point to the market in question, whichever is lower.

By Mr. Robison:

Q. Well, now, under the conditions that I have asked you to assume, in your opinion as an economist, why does the use of the basing-point method of quoting prices furnish a suitable means of giving instructions to salesmen?

A. Because it takes into account the principal variation in competitive forces at particular markets. A manufacturer may start with his own price. He may add to that price—or mill net, I would rather say, an amount sufficient to cover freight as he goes away from his plant until he comes into an area in which it would be impossible to get a price at that, and then he charges a price which he can get there in view of competitive circumstances, and this method is merely a way of working that out.

Q. Under the conditions that I have asked you to assume in hypothetical question A, if the use of the basing-point method yields varying net amounts per unit of product to the conduit seller on sales made in different
5380 areas, is or is not, in your opinion, that result necessarily disadvantageous to the seller's customer?

Mr. MacIntyre: I object. There has been no foundation laid for that so as to show that this witness is competent to answer. Furthermore, it calls for speculation.

Mr. Robison: I withdraw the question.

By Mr. Robison:

Q. Under the conditions assumed in hypothetical question A, would you, as an economist, expect to find a substantial degree of identity or uniformity in price quotations submitted by conduit sellers in bids for public openings?

A. There are a number of factors present, it seems to me, in the industry, in the situation as described here, that would be favorable to such identity of quotations on public biddings. I would not, if we try to use the words very carefully, say that I expect to find identity; neither, on the other hand, would I expect to find any wide divergence. I certainly say that I would not be surprised to find identity, nor would I regard that as being inconsistent with what one might expect in a normal behavior of business men seeking their self-interest.

Q. And in connection with that last reference in your answer, do you mean also business men competing with each other?

A. Yes. Perhaps I did not get in all phrases.
5381 What I intend to say is the normal actions of individual business men acting individually in their own individual self-interest, and thereby, of course, implying that they are in competition, rivalry, with one another.

Q. In your opinion, Professor Griffin, is it possible to have competition when sellers merely meet the prices of competitors without cutting under them in any given market?

A. Yes, in my opinion, it is. I think that would clearly follow if we recall my definition of "competition." It is rivalry for the patronage of a given group of buyers.

It is my conception that an individual is making his prices in an effort to serve his own interest, and his pricing is conditioned by the prices being charged by someone else. That is an essential point. If the price that he makes is conditioned by the price that someone else is making, then you have a competitive—that is a competitive procedure.

It surely is not necessary, for a man to qualify as a competitor, that he must be persistently offering lower prices than his competitors are offering. He might very well adopt as a general business policy that "I will never be undersold," and that, I should say, would be a competitive attitude.

Trial Examiner Norwood: Would that be price competition?

The Witness: I would say that is price competition; yes, sir; when the price that you can make is con-
5382 ditioned by—you are not utterly free to make any price you wish—the price you can make is conditioned by what the other fellow is doing, then I should say that is a competitive limitation placed upon your price policy.

Trial Examiner Norwood: It limits it in one direction?

The Witness: Yes. By opposition, Your Honor, to follow that thought further, a monopolist, of course, does not have to consider any other person's price.

By Mr. Robison:

Q. Professor Griffin, will you tell us whether or not, in your opinion, varying factory net proceeds per unit sold are inconsistent with the principle that prices of different sellers tend to be uniform under competitive conditions in any one market?

A. No, I do not think that those two principles—or that that is at all inconsistent with the principle that you have mentioned. In fact, if you have mills variously located relative to markets and competing with one another, then if you are going to have—as I think you must—uniform prices within those individual markets, you inevitably would have varying mill nets, or net proceeds, to any one mill.

Q. And, just following a similar thought, in your opinion as an economist are varying factory net proceeds per unit sold indicative of a failure of the seller to follow
5383 his self-interest in a normal competitive manner?

Mr. MacIntyre: I object to that. There has been no foundation laid to show that this witness is competent to answer,—

Trial Examiner Norwood: Objection overruled.

Mr. MacIntyre: —and, furthermore, it calls for speculation.

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Trial Examiner Norwood: Objection overruled. All right.

A. No, I do not think it indicates any failure to follow his individual self-interest. It simply means an individual starts out with certain net proceeds which he would like to get, and he gets those proceeds wherever he can, and where he can't he does the next best thing of taking a lower price or a price which yields him a lower net return when the alternative is not to sell in that particular market.

By Mr. Robison:

Q. Assume that each conduit seller generally refrains from quoting f. o. b. its place of production, or shipment, prices that are independent of and unrelated to delivered price quotations determined from a basing-point formula; would the fact that he so refrains indicate to you, as an economist, a lack of competition?

A. No. His insistence upon stating his prices in one particular way, such as the one you have described,
5384 would not indicate to me any lack of competition. I can see reasons why he might well refuse to do that. He—

Q. Will you tell us some of the reasons that you see?

A. One in particular that I had in mind is that when a manufacturer accepts a mill net return on some sales lower than he receives on others, he presumably does that in order to meet a local competitive situation.

Now, the method of pricing you have described, that is, a delivered price, permits him to see to it that that special concession is made only in the places where the special circumstances exist. If you did not—if he did not insist upon something of that kind there would be the possibility that buyers in a particular market would come to him representing that they were from another market where competitive conditions were particularly favorable to the buyers, and ask for prices in view of those special competitive conditions. He would have no way of determining whether they actually were from the market which they represented themselves to be from or—or not. In other words, the whole practice of diversion would grow up if he did not insist upon this one method of pricing.

Now, I don't think that it is unreasonable to suppose that some business men might regard that as a sufficient reason for adhering to this particular pricing method.

Q. If a conduit seller generally were to quote
5385 f. o. b. its place of production, or shipment, prices that were independent of and unrelated to delivered price quotations determined from a basing-point formula, would that result, in your opinion, in the giving up of the practice of freight absorption by the conduit seller?

Mr. MacIntyre: I object. There has been no foundation laid for that question.

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Objection overruled. Answer it.

A. I think it would be difficult to maintain a practice of freight absorption under the circumstances described, and for the reason I gave in my last answer to you, that freight absorption is made to particular markets to meet particular competitive conditions in those markets. Those competitive conditions can be and are measured by reference to base prices and transportation costs of competitors, and if you try to disregard that, it seems to me it would be difficult, if not impossible, to maintain the practice of freight absorption.

Trial Examiner Norwood: But did you assume uniform mill price?

Mr. Robison: In my—

Trial Examiner Norwood: Yes.

Mr. Robison: In my question?

5386 Trial Examiner Norwood: Yes.

Mr. Robison: Not specifically. My question was addressed to a situation concerning which some—to which some of the allegations—count 2 of the complaint—apply, namely, the quoting of prices unrelated to delivered prices.

Trial Examiner Norwood: Yes, but couldn't the price in the outstanding market be met by an adjustment of the f. o. b. mill price which would be equivalent to a freight absorption?

The Witness: The difficulty with using an f. o. b. price and then making some adjustment in that, as I see it, is the difficulty of determining the location and the competitive conditions surrounding any particular buyer. The prospect, as I said in answer to a previous question, that buyers will represent themselves as being from the market that would naturally—that, under competitive conditions, would bring the lowest price, when actually they

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were from other markets, it would tend to generalize the concession of a price that was designed to be just a special price to meet a particular situation to become the general price.

By Mr. Robison:

Q. In your recent answers, Professor Griffin, you have referred to "base price" and "cost of transportation" and "delivered price." Does the question of the amount of the price at the basing point that is used in determin-
5387 ing any particular delivered price have any bearing on the question of whether or not the basing-point method of selling is being used?

Mr. MacIntyre: Oh, I object that. The hypothetical question has presented a set of facts which the witness has been asked to take into consideration in his answers as to whether or not a basing-point system is used.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: Are we departing from the hypothesis? Certainly the question does not show—

Mr. Robison: This question is in no way inconsistent with any hypothesis assumed in the hypothetical question.

Mr. MacIntyre: I submit that—

Trial Examiner Norwood: Is it in any way related to it?

Mr. Robison: No, it is not directly related to it.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I think he can tell us that. Objection overruled.

A. I don't know that I see quite what you are—have in mind. The price—

By Mr. Robison:

Q. Well, let us assume that today one manufac-
5388 turer of rigid conduit quotes a price, a delivered price at a point outside of Pittsburgh in terms of $3 at Pittsburgh.

A. And this is a manufacturer located outside of Pittsburgh?

Q. This is a manufacturer either located in Pittsburgh or outside of Pittsburgh.

A. Yes.

Q. Let us assume that—

A. And that was $3 over the—

Q. Three dollars at Pittsburgh.

A. Three dollars at Pittsburgh.

Q. The base price to which freight is to be added to make the delivered price. Let us assume that at substantially the same time another manufacturer of conduit quotes for delivery at the same point of delivery a price of $2.90 at Pittsburgh, being the price to which freight is to be added to determine the delivered price. Now, what is involved in my question is this: Would you say with reference to either of those manufacturers so quoting, that he—that is, that particular manufacturer—was not using and following a basing-point method of quoting?

A. All right—

Mr. MacIntyre: Object to that. It is inconsistent with the hypotheses which have been propounded to this witness and upon which he has been giving his testimony, and it brings into question here a proposition not raised by
5389 the pleadings in the case.

Mr. Robison: Well, I don't think there can be any doubt as to it not being under the pleadings, Mr. Examiner,—any doubt as to whether or not it is under the pleadings, because the pleadings attack the basing-point method of selling. My question is directed at ascertaining from the witness, in substance, what is a basing-point method of selling and whether selling under the assumed conditions does constitute—

Trial Examiner Norwood: He is assuming that the two manufacturers are at the same point and they are quoting different prices.

Mr. Robison: Certainly.

Trial Examiner Norwood: And you are asking him whether or not they indicate that he is employing a basing-point method.

Mr. Robison: I am asking him—it isn't quite that I am asking whether he would say, with reference to either of those manufacturers, that he is not quoting on the basing-point method.

Trial Examiner Norwood: Objection overruled.

A. Take the first two—let us take them separately. I would say that the man who was outside Pittsburgh and who quotes a price of $2.90 at Pittsburgh plus freight from Pittsburgh to the point of delivery was using a bas-
5390 ing-point method, even though that price of $2.90 might be different than the price of some others in Pittsburgh.

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Now, we come to the two manufacturers in Pittsburgh, and I don't see any problem as to the disparity of the prices, the fact that one is $3 and the other is $2.90. If one of them is basing point the other is basing point. I think one might say that any manufacturer located in Pittsburgh who quotes his price in Pittsburgh and simply adds freight out to the point of delivery, there might be a rather nice question of language as to whether he, in that particular sale, is using a basing-point method at all, providing that point, as I have said, is one to which he will just add freight from his place of business. However, that method is—it would be awkward to say that on some particular transactions the basing-point method is being used and on others it was not, and I would describe a manufacturer, as I stated before, who sometimes and on some sales does quote prices upon points other than his own point of manufacture plus freight, as using the basing-point method.

So I would say this man was using the basing-point method if he was doing these other things, too.

Mr. Robison: Mr. Examiner, if it is satisfactory to you, I would suggest that we adjourn at this point for the day.

Trial Examiner Norwood: Well, is Tuesday morn-
5391 ing all right?

Mr. Robison: Tuesday morning, you say?

Trial Examiner Norwood: Tuesday morning, yes. Next Tuesday morning.

Mr. Robison: Yes, that is quite all right.

Trial Examiner Norwood: The hearing will recess until next Tuesday morning, February 17, 1942, at 10 o'clock a. m., Eastern War Time, in this room.

(Whereupon, at 2:45 o'clock p, m., February 13, 1942, the hearing in the above-entitled matter was adjourned.)

5393 PROCEEDINGS.

Trial Examiner Norwood: Hearing come to order.

Pursuant to adjournment on Friday, February 13, the hearing in Docket 4452 is now reconvened in Room 532, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., on the 17th day of February, 1942.

Please note the appearances.

Dr. Griffin will resume the stand.

CLARE E. GRIFFIN resumed the stand and testified further as follows:

Trial Examiner Norwood: Proceed with the examination.

Direct Examination (Continued) by Mr. Robison.

Q. Professor Griffin, in your opinion as an economist, could a conduit seller generally quote f. o. b. its place of production or shipment prices that are independent of and unrelated to delivered price quotations determined from a basing-point formula, and at the same time quote prices also by the basing-point method?

5394 Trial Examiner Norwood: Answer the question.

Could you quote by the basing-point system and quote prices that are unrelated to delivered prices?

The Witness: No, I would not think that you could, except perhaps temporarily, but I think that the—that any attempt at compromise between—if I understand

5395 your question correctly—between the two basic ways of pricing would not be feasible in the long run. And one reason for that is that if you should attempt to quote prices, we will say f. o. b. the mill and make concessions from that, that that would tend to break down, so it seems to me what it comes to is that you may have either a uniform f. o. b. plan or you may have a delivered plan which, to my mind, implies the basing-point method. I don't think you can satisfactorily compromise between them.

Is that in answer—

Trial Examiner Norwood: You mean there is no other way of quoting delivered prices except by using the basing-point method as employed here?

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The Witness: That isn't quite what I mean, but I would say that if you do quote delivered prices, then those prices would presumably be adjusted to meet competitive conditions in particular markets, and that brings you right back to the basing-point method.

Mr. Robison: And then I would remind you, Mr. Examiner, that my question had reference to the quoting of prices f. o. b the manufacturer's place of production or shipment, independent of and unrelated to delivered prices. That follows the language—

Trial Examiner Norwood: He says those would not be in conformity with the basing-point system.

Mr. Robison: No. I don't think he did say that.

5396 Trial Examiner Norwood: F. o. b. mill.

Mr. Robison: And unrelated to delivered prices.

Trial Examiner Norwood: Yes. Yes.

Mr. Robison: If quoting that way, could the same manufacturer at the same time quote prices on the basing-point method? was my question. I think that is what the witness has answered.

Mr. MacIntyre: I move that the witness' answer be stricken because it is no more than asking the witness to speculate on whether a manufacturer could enter into an agreement with four of his so-called competitors and still do business. Unless the witness—

Trial Examiner Norwood: Well, motion is denied.

Mr. MacIntyre: —has seen operations after an examination of evidence, he can't answer.

Trial Examiner Norwood: Off the record a minute.

(Discussion off the record.)

By Mr. Robison:

Q. Professor Griffin, in making your answer to my former question did you have reference to merely isolated and occasional transactions of one kind or the other, or were you speaking with reference to continued and general methods of quoting?

A. I am speaking in relation to continued and general methods, and I think I implied that by saying at the

5397 outset that temporarily it might be possible to try these two plans, but I thought they would ultimately resolve themselves into one plan or the other.

Q. If a conduit seller were to quote f. o. b. its place of production or shipment prices that were independent of and

unrelated to delivered price quotations determined from a basing-point formula, as an economist, would you expect the f. o. b. price quotations to be uniform or non-uniform?

A. You are referring to—not to quotations at—not to quotations for goods delivered at certain points, or are you?

Q. My question had reference to f. o. b. prices independent of and unrelated to delivered prices.

A. And then the question is—

Q. Perhaps I had better have it read.

A. The latter part.

(Question read as follows:

"* * * as an economist, would you expect the f. o. b. price quotations to be uniform or non-uniform?")

A. Well, again, I would expect at the outset that mills would attempt to make different f. o. b. prices. Ultimately, I believe that that plan would not work and it would be brought around to uniform f. o. b. prices.

Q. Why would you expect them to be uniform?

A. Because if you are quoting f. o. b. prices, you
5398 have no way of knowing where the particular buyer is located; and, therefore, the reasons that would prompt you, in the first instance, to try to vary these f. o. b. prices, namely, the varying competitive conditions surrounding the different buyers, would be impossible to determine under the f. o. b. plan. Each buyer would be likely to represent that he was coming from a town in which those competitive conditions would be favorable to him and, therefore, would be asking for the price concessions which a manufacturer would intend to give only to particular localities, and, therefore, would be able—since the manufacturer could not check up and tell just where he was going to use this material, the price that was granted originally as a concession would come to be the general price.

Mr. MacIntyre: Now, if Your Honor please, I move to strike that portion of the answer in which the witness says that a buyer would likely do thus and so. It is a case of it going into psychology and not to economic theory.

Trial Examiner Norwood: This is the economic end of this.

Mr. MacIntyre: Well, speculating on what a particular buyer would do in a particular set of circumstances.

Trial Examiner Norwood: He is giving us his opinion here as an expert economist on these various situations.

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He has been accepted as an expert. You can call it speculation or you can call it whatever you wish. Anyway,
5399 it is admissible.

Objection overruled.

By Mr. Robison:

Q. In your opinion as an economist, under the conditions assumed in hypothetical question A, if a proposal were made that each conduit seller generally should quote f. o. b. its place of production or shipment prices that were independent of and unrelated to delivered price quotations determined from a basing-point formula, what interpretation of the proposal is essential in order to give it a practical meaning?

A. I would interpret that as meaning a recommendation of or requirement—I have forgotten what the word was—of a uniform f. o. b. mill plan.

Mr. MacIntyre: Now, if Your Honor please, I move to strike that because that is an attempt to interpret at this time what an order of the Commission would be if the Commission did issue an order against these Respondents compelling them to cease and desist from their use of the basing-point system. It is highly improper for a witness to attempt to interpret a prospective order.

Mr. Robison: Of course, this is not a matter—

Mr. MacIntyre: That is exactly what it is.

Mr. Robison: It is not a matter of attempting to interpret a specific order at all. It is a matter of expressing an opinion as to what the effect would be if the mat-
5400 ter that is charged in count 2 of the complaint were held to be an improper method of procedure.

Trial Examiner Norwood: Read the question and answer.

(Question and answer read.)

Trial Examiner Norwood: You state as your economic opinion—strike that.

You state as your expert opinion as an economist, that if this system were prohibited, then there would be only one alternative; is that what you meant by that answer?

The Witness: Yes. I would subscribe to that. I was certainly not attempting to interpret what the—an order of that kind would intend. I was simply interpreting what—how it would appear, as an economist, to actually work out.

Trial Examiner Norwood: Well, I think that it is essential to tell, under the issue of public interest, just the situation here and the exact nature of this competition and its effects, and so forth.

I shall overrule the objection.

By Mr. Robison:

Q. As an economist, under the conditions assumed in hypothetical question A, would you expect that a conduit seller generally, acting intelligently in his own self-interest, would voluntarily quote f. o. b. its place of production or shipment prices that were uniform?

5401 A. No, I do not. I think that an individual manufacturer, behaving as it is observed business men wish to behave, in an industry in which there is considerable plant and equipment and the desire for volume, would strive to increase his volume of business, and in order to do that that he would resort to such price concessions as he had to make in some markets in order to get that increased business. I do not mean to say that he will make any concession necessary to get business, because every manufacturer must face the question, How far is he willing to make the concessions in order to get particular—the particular order. But I would not expect him to quote uniform f. o. b. prices in all cases, but rather that he would make concessions to meet competitive conditions.

Q. If each conduit manufacturing company were forbidden by an order of a Government commission or a decision of the courts to quote prices which were related to the delivered prices in the various markets in which such a conduit manufacturing company hopes to sell, in your opinion as an economist would that result in fostering or in restricting competition?

Mr. MacIntyre: I object. It is not a matter of economic theory to speculate upon what something in the future might do, when nothing of that kind has ever been observed in the past. It is just a matter of pure common sense that that could not occur. That is, that you

5402 could not determine before something has happened what the result would be.

Mr. Robison: I think this is a perfectly proper subject for expert opinion. Of course, it is opinion that I am asking for.

Mr. MacIntyre: A man can't give an opinion until he has seen something happen—

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Trial Examiner Norwood: Let us have the question read.

Mr. MacIntyre: Or knows that it has happened.

(Question read.)

Mr. MacIntyre: In other words, it asks for the verdict as to whether or not it is proper to issue an order in this case against this method.

Trial Examiner Norwood: I think we are off the lot this time.

Mr. Robison: As I have said, I think the question is perfectly proper. It deals with a perfectly proper subject for the opinion of an economic expert.

Trial Examiner Norwood: Just what could he do if he were forbidden to meet prices at the point of delivery? Isn't that the substance of your question?

Mr. Robison: No, not what he could do. The question is, In the opinion of the witness, would it foster or restrict competition to do business in that way?

Trial Examiner Norwood: I think that you can—if
5403 he knows or it comes within his scientific theories to tell what effect it would be, that is, in a factual way, he can tell that, but I think that that conclusion there goes a little too far.

Mr. Robison: It calls merely—

Trial Examiner Norwood: He is giving a conclusion there about competition which, you know, is a very broad word in this case. I think he may show in a factual way anything that would happen—

Mr. Robison: No, it is—

Trial Examiner Norwood: —if he were forbidden to sell in the way you have stated.

I will sustain the objection.

By Mr. Robison:

Q. Professor Griffin, in your opinion as an economist, under the conditions assumed in hypothetical question A, can manufacturers of rigid conduit more effectively compete with each other by reason of delivered price quotations or by means of uniform f. o. b. price quotations?

Mr. MacIntyre: That is objected to. There is no foundation laid to show that this witness can competently
5404 answer such question.

Trial Examiner Norwood: Read that question again.

(Question read.)

Mr. Robison: In that question when I refer to "f. o. b. price quotations" I mean price quotations f. o. b. mill.

Trial Examiner Norwood: Let him answer. Objection overruled.

A. There are quite evidently some forms of competition under the delivered price method which would not obtain under the uniform f. o. b. mill plan. I refer to the fact that under the delivered price method there are a number of sellers at each particular market. We do have, it seems to me, quite clearly a larger number of sellers vying for the patronage of buyers at each individual point within the market. Now, that is not to say that there would be no competition under the other method. Under the uniform f. o. b. mill plan the force of competition would be the desire on the part of each manufacturer to maintain in some cases exclusively for himself the largest market area, and, therefore, at the limit of one market area and the beginning of another, that is, at the border line between the two, there would be rivalry; there would be different sellers vying for the patronage of the same group of buyers, but that fact of different sellers vying for the patronage of a given group of buyers would, I think, quite clearly not obtain in as many different places as it would under the de-
5405 livered price method.

On the whole, I believe that the force of competition in an industry of the type described in this hypothetical question is more effective under a delivered price method than it would be on the other.

Trial Examiner Norwood: How about with respect to a non-uniform f. o. b. system?

The Witness: If you have a non-uniform f. o. b. system then you are presumably departing from uniformity in order to meet competition at particular points, and that is precisely what you are trying to do under the delivered price method and the basing-point method. So in so far as you do depart from this uniformity for this purpose, you are thereby approaching the same method that you have previously—you are thereby approaching the other method, the basing-point method.

Trial Examiner Norwood: It would accomplish the same result, would it?

The Witness: I do not—let me say two things on that: One, that it would accomplish the same result only in so far as it did the same things; and, in the second place, that

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I do not believe that in the long run and with the working out of competitive forces with business men as we have observed them, that these two methods can in the long run exist side by side, and that it is futile, therefore, to seek for some sort of a compromise part way between these two
5406 clear-cut concepts.

Trial Examiner Norwood: Go ahead.

By Mr. Robison:

Q. Professor Griffin, are you familiar with the term "freight absorption"—

A. Yes, sir.

Q. —in connection with your studies in economics?

A. Yes, sir.

Q. How do you define "freight absorption"?

A. I would define "freight absorption" as meaning a price concession made in a particular market—that is, at a particular point—to meet competitive conditions at that point. In a sense the word is a misnomer because it implies that one particular element of the cost of getting goods to that point is absorbed, and that is not, strictly speaking, true. All one can say is that the seller selling in a particular market finds it necessary to make a concession from a price which he would otherwise have charged because of competitive conditions.

Now, we continue to use the words "freight absorption" because it is in common usage. Because also this freight factor is frequently the one that does determine the competitive difference between sellers. But I want to point out that in the very strict use of the word, that it is something of a misnomer, and that really what we have in
5407 mind in "freight absorption" is simply price concession.

Q. If each conduit manufacturer were compelled by an order of a Government commission or by a decision of the courts to discontinue the use of any method of pricing which involved regularly an absorption of freight by the seller, would it, in your opinion, result in greater or in less regularity in manufacturing operations in the various conduit manufacturing plants?

Mr. MacIntyre: I object to that. It is not a question calling for a statement of economic theory or a statement of economic principles.

Trial Examiner Norwood: Objection overruled.

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A. I think it does call for reasoning from economic principles, and I would say that when manufacturers do use this freight absorption device, the effect is to enable them to sell in a larger number of markets than they would otherwise be able to reach, and, since there are individual variations in the volume of business in the different markets, the effect of reaching a large number of them would be to tend to stabilize the amount of business and create greater uniformity in the volume of business of a mill that practiced a policy of that kind.

By Mr. Robison:

Q. How would you, as an economist, expect the lessened regularity of operations to affect the costs of pro-
5408 duction of individual mills over a period of time?

Mr. MacIntyre: That is objected to because that calls for a statement not related to any economic principles or economic theory. What would happen under such a situation cannot be predicted.

Trial Examiner Norwood: I think that he can relate the situation entirely from economic factors and tell his opinion about it.

Objection overruled.

A. If you have a—an increase in irregularity or a diminution in regularity of business at the particular mills, then I would think that that would tend—well, one can say quite certainly from your economic principles, that that would tend to increase costs of production. That would be true if you looked at it from the point of view of one particular mill; that mill has many ups and downs in volume, then it is clear that it must have a capacity which is large enough to take care of the ups, and that it, therefore, is going to have idle plant on its hands during the downs, and if that is true of each individual mill, I believe it is also true for the industry as a whole. And, therefore, the tendency would be to require a larger plant throughout the whole country than would be required if there were a greater regularity of production in each individual plant. And with this larger plant you, of course, have higher unit costs.

5409 Trial Examiner Norwood: Unless plant capacity of the entire country could meet the needs then?

The Witness: I beg your pardon?

Trial Examiner Norwood: Unless plant capacity for the entire country would be required; is that correct?

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The Witness: Yes, sir; I think so. Smaller plant capacity for the whole country would be required to produce any given amount of conduit, if there is a relatively high degree of regularity of production in each of these plants. I think that is quite clear.

By Mr. Robison:

Q. Would a pricing method which permitted freight absorption, in your opinion, be unrelated to delivered prices?

A. No. Freight absorption, from the very nature of the case, pays attention to delivered prices. The purpose of making a concession is to give a delivered cost to the buyer which will be attractive to him in the light of competitive offers, and, therefore, it must refer to the price at the point of delivery.

Q. Would a pricing method which permitted freight absorption normally have the same results as are yielded by the basing-point method, or not?

A. If the policy of freight absorption is generally carried out, you virtually have a basing-point method, and then I would say that the—that it would yield
5410 the—it would yield the same results; yes. Particularly, it would yield the results of enabling the manufacturers to sell in markets some distance from their mills.

Q. Now, please state whether or not in order to have a true market it is necessary that prices should change with any specifiable frequency such as every few minutes or days or weeks?

A. No, there is no specifiable frequency.

Q. Under the conditions assumed in hypothetical question A, as an economist, would you expect the price of conduit to fluctuate at frequent intervals or to be stable over a considerable period of time?

A. I would expect a considerable degree of stability.

Q. Why would you expect such a degree of stability of prices?

A. In the first place, it is a manufacturing industry. There are relatively few manufacturers, that is, few by comparison with the number of wheat growers, for example, in the country, and, therefore, each one of these manufacturers must recognize that any change—

Trial Examiner Norwood: I think you have covered this with this witness. There are points there which tend to stability. I have a list of them here.

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Mr. Robison: I don't think we have gone into that with this witness before, Mr. Examiner.

5411 Trial Examiner Norwood: Well, he answered a similar question.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

Mr. Robison: Do you want the question?

Trial Examiner Norwood: Go ahead.

The Witness: Just read the latter part of my answer.

(Answer read.)

A. (Continuing.) —in price which he would make would have a substantial effect upon the price policies and actions of his competitors, and that will determine the market price in the areas in which he is going to have to sell. Consequently, each decision to change a price must be made as a matter of deliberate consideration and decision, in view of all the consequences.

It is quite obvious from that that you cannot—that you would not likely have prices varying with a high degree of frequency. There are—to be a bit more specific, there are considerations that the—each manufacturer must bear in mind. He comes to a market—or he looks out upon the market, and he finds a certain price prevailing in that market. He may consider the possibility of trying to raise that price. If he does he hopes that his competitors

5412 will follow him. If they do not follow him, then with a homogeneous product, he will have to drop back to his old price. Another possibility—and I may add there is considerable uncertainty, of course, as to whether they would follow, and if he does get out ahead of the rest of them and then has to fall back to the old price because competitors did not follow, he, in the meantime, has lost considerable good will from his buyers and put himself in an unenviable position. That is a deterring consideration.

Then, on the other side, he might consider the reduction of the price. Well, he must realize that if he does reduce the price, the others are also going to have to reduce their prices and that the advantage which he might hope to gain of being below his competitors would be an extremely short-lived advantage, and that would act as a deterrent to making that change.

So, looking out upon the market at any given time, seeing a given price existing here, and considering the alterna-

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tives of trying to raise that price or trying to lower that price, there are rather powerful arguments that tend to lead him to the conclusion that he had better leave it as it is. That is not to say that you are never going to have price changes. You do. But those prices will come about when there are some pretty powerful forces working one way or another.

Now, all that I have said, I believe, of this situation
5413 could be said of manufacturing industries generally,
and, I believe, are rather generally recognized and tends to explain a considerable degree of stability of price in an industry of this kind.

Q. Now, Professor, are these views that you have so expressed based in any part on any principle of economics that has reference to similarity or identity of price in a given market at any given time?

A. Yes. I have implied that—more than one point, I think, in the previous answer that all of the sellers would be selling at the same price. I think it is axiomatic in economics that homogeneous products selling in the same market at the same time with informed buyers will have a —there will be a very strong tendency to identity of price.

Q. On the facts assumed in hypothetical question A, if a conduit seller protects contractors on price, does that practice, in your opinion as an economist, have any bearing on the frequency with which you would expect conduit prices to fluctuate?

A. Yes, I think it would. It tends to reinforce the very considerations that I was speaking of in the previous—in a previous answer.

Suppose the manufacturer is considering the possibility of a price increase. Then because of these guarantees
that he has given he will not be able to apply that
5414 increase to a very substantial amount of business
which has already been secured. Suppose, on the other hand, he is considering a price reduction. Then the existence of such guarantees will mean that that reduction will have to be given to a considerable number of buyers on orders which have already been secured. And those factors tend to neutralize any immediate advantage—tend to neutralize any immediate advantage of a price change one way or the other.

Q. On the facts assumed in hypothetical question A,

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as an economist, how could you explain the failure of the sale of conduit to respond promptly to a change in price?

A. The principal reason is that conduit is used as a material in the production of larger units of things, in this case as a material, and I judge a rather minor material as far as cost is concerned in the total cost of a building; and, therefore, a reduction of price of that one item is not likely to lead to any substantial effect upon the number of buildings built, and, therefore, it would not have much effect upon the demand for conduit.

There is another way in which price changes might affect the consumption of conduit. That is by displacing, in the case of a price reduction—displacing some competitive types of materials. However, I would suppose architects, contractors, and so on, would have their ideas fairly well set, and unless this change was a marked change, that
5415 you would not find any substantial departure from a material or method that had been previously decided upon because of this price change. That—

5416 Go ahead.

By Mr. Robison:

Q. In paragraph 21 of the statement of facts for hypothetical question A, it is stated that during the last eight years there have been as many as 15 changes in the quotations of conduit prices published by various conduit manufacturers, the period of time between the dates of such changes varying from less than a month to approximately a year and a half.

Now, assuming that that statement states facts, do such facts indicate to you, as an economist, an absence of competition?

A. No.

By Mr. Robison:

Q. In a competitive market, Professor Griffin, would you expect the seller of a product such as rigid conduit to be raising and lowering his price quotations each time that an attempt is made to effect a sale?

A. No, I would not.

Q. And why not?

A. Partly because of the considerations that I mentioned a few moments ago; that is, that he recognizes
5417 that price changes which he makes will have a bearing upon what his competitors do, and that, in any event,

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he is going to have identical prices prevailing in the market, and that the advantages, therefore, that he might hope to gain from being under a competitor would be very short lived advantages.

Q. Is it common for economists to differentiate between long-range tendencies and short-run fluctuations?

A. Yes.

Mr. MacIntyre: It is irrelevant and immaterial.

Trial Examiner Norwood: Overruled.

By Mr. Robison:

Q. May or may not long-range tendencies manifest themselves under competitive conditions?

A. Yes; they certainly may.

Q. In your opinion as an economist, under competitive conditions, can adjustments to long-range tendencies in prices be made without short-run fluctuations?

A. Yes, I think they may.

Q. On the basis of the conditions in the rigid conduit industry as assumed in hypothetical question A, in your opinion as an economist is the rigid conduit industry one in which logically price adjustments might take place from a long-range standpoint without short-run fluctuations?

A. Yes.

Q. Would the adjustment of prices in such an in-
5418 dustry only in accordance with the long-range outlook indicate to you, as an economist, an absence of competition?

A. No, it would not.

Q. From your observations as an economist, is any substantial quantity of merchandise sold in the United States on a delivered price basis in other than basing-point industries?

Mr. MacIntyre: I object. There is no foundation laid for that question to this witness.

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Now, that is a factual question.

Mr. Robison: It is.

Trial Examiner Norwood: If you know the facts you may answer that question, but not otherwise.

Objection overruled.

A. From my observations as an economist and student

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of marketing methods, I would say that there are a number of instances of delivered prices being used without a basing-point method.

For example, there are a number of products sold under uniform delivered prices. These are frequently commodities that are relatively light or in which transportation cost is relatively small, relative to value. Toilet articles, drugs—a number of drugs, tobacco products, cig-
5419 arettes are sold on uniform delivered prices.

Then there are some others that are sold on f. o. b. mill with full freight allowance, which has the effect, you see, of uniform delivered prices. Among these are certain types of building materials; particularly I think of insulation board and hard board.

Then there are some that are sold on delivered price methods with a zone method of classifying these delivered prices. Among these are certain types of household equipment, like refrigerators, and I am quite sure others, that do not come to my mind at the moment, in which there are prices that are uniform delivered prices within certain zones.

By Mr. Robison:

Q. From your observations as an economist, may or may not the sale of merchandise at a delivered price other than by the use of the basing-point method involve the absorption of freight by the seller?

A. Yes. The delivered prices may very well involve absorption of freight without anything formal as a basing-point method.

I think, for example, of the furniture industry, in which furniture is sold largely f. o. b. Perhaps this does not fit your question precisely.

Q. Would you like to have the question read?
5420 A. Perhaps you better. I will see if this illustration fits.

(Question read.)

The Witness: Yes, it may involve the absorption of freight in order to meet competitive conditions. But if the product is not a homogeneous or standardized product, then the absorption of freight would not need to be, and probably would not be so precise as it would be in the case of a product which is highly standardized.

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By Mr. Robison:

Q. I think you were about to illustrate that by reference to some part of the furniture business. Do you wish to continue that?

A. I don't think so, because, on second thought, the furniture business is selling from the f. o. b. method, but nevertheless making some freight absorption. So it does not precisely fit the question you asked.

Q. When merchandise is sold at a delivered price and there is an absorption of freight by the seller, does that indicate to you, as an economist, an absence of competition?

A. No, certainly it does not indicate an absence of competition. On the contrary, it would seem to indicate the presence of competition, because the usual reason for the freight absorption is to meet competitive conditions.

Presumably no manufacturer likes to accept a 5421 price lower than his full mill net, and he does so to meet competition where it is necessary to do that, or to accept the other alternative of not selling in the market at all.

Q. In principle, as an economist, do you find any grounds for distinction between the practice of absorbing freight under the basing-point method and the practice of absorbing freight when other delivered price terms are used?

A. No, in principle I do not. The basing-point method, as I see it, involves an effort on the part of various mills to charge prices that will meet competitive conditions in particular markets, and in an industry in which the product is highly standardized and in which there are these other conditions that we have described the other day it is quite likely that that method—it seems reasonable that that method of determining what the competitive conditions are would be used, and I think, therefore, that in principle they are the same.

Q. Under the conditions assumed in hypothetical question A, would the occurrence of cross-hauling indicate to you, as an economist, an absence of competition?

A. No. Again I would say that would indicate the presence of competition, because if you could imagine a situation in which you had just one company owning all of the producing plants within the country, I think there

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would be very little genuine cross-hauling. Cross-hauling is to my mind a phenomenon of competition.

5422 Q. Would you as an economist expect the elimination of cross-hauling to occur under conditions of monopoly or under conditions of competition?

A. I would—

Trial Examiner Norwood: Off the record just a minute.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

A. I would not look for the elimination of cross-hauling under competitive conditions. In order to eliminate cross-hauling we would have to have either monopoly conditions or some outside order, something outside the regular forces of normal competition in manufacturing industries.

By Mr. Robison:

Q. From your observations of business behavior, what reasons, if any, can you find for the occurrence of cross-hauling under the conditions assumed in hypothetical question A?

A. The reason is an individual one with each mill, I think, in the sense that each mill owner would like to get as large volume as possible, and after he has gotten the amount of business which is available to him in the immediately contiguous market, then he decides that it is worth while to reach out into a more distant market even at a price concession. Other manufacturers, reasoning independently in the same way, are perhaps reaching over into his market. And that may give rise to cross-

5423 hauling.

Q. Under the conditions assumed in hypothetical question A, in your opinion, is or is not cross-hauling economically justified?

A. An answer to the question whether cross-hauling is economically justified involves taking the point of view of the individual manufacturer under competitive conditions.

If we are realistic and recognize that we do have a number of independently owned manufacturers, and if we believe that it is desirable for them to be competing with one another, that is, if we believe in the beneficient effects of competition, then it seems to me that cross-hauling is an inevitable result.

Now, if one could start fresh and try to devise a quite different kind of society and ask whether under that ideal kind of society you are going to have cross-hauling and

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whether it would be economically justified, you might come to a different answer. But I think that is quite unrealistic.

Any method is justified if the cost of that method is less than the disadvantages that would be involved in trying to get rid of that method, and I should say that cross-hauling is much like a number of other competitive costs, such as competitive advertising and other things of that character, in a competitive system which gain their principal justification from the fact that they are simply
5424 small elements of a larger competitive scheme of things.

Q. Would you say that it is a part of the cost paid for the blessings of competition?

Mr. MacIntyre: I object.

Mr. Robison: If it is objected to, I withdraw it.

By Mr. Robison:

Q. Under the conditions that I have asked you to assume, is the cost of cross-hauling necessarily a burden to the buyers?

Mr. MacIntyre: I object. That question does not call for any statement of economic theory or statement of economic principles.

Trial Examiner Norwood: Objection overruled.

Mr. MacIntyre: It cannot be answered without factual knowledge of a particular situation.

Trial Examiner Norwood: Overruled.

Go ahead.

A. In the first instance, I believe the cost of cross-hauling is a cost that impinges upon the seller. Now, to try to follow that, the effect—a cost of that kind down through the various steps and determine where it finally rests is very difficult, and I would not want to attempt a formal answer. It is something like asking who pays a certain tax. Well, you know who pays it in the first instance, and then it becomes very difficult to follow it through all of the ramifications and say where it finally rests.
5425 I see no reason, however, for saying at the outset that this cost is borne by the buyer. It is clear that in the first instance it is borne by the seller.

By Mr. Robison:

Q. Can cross-hauling occur, in your opinion, when sellers quote f. o. b. factory prices?

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A. And make no deviations from f. o. b. factory prices?
Q. Yes. Answer the question on that basis.
A. Uniform f. o. b. factory prices?
Q. Yes.
A. I should say that if you had uniform f. o. b. factory prices you would not have genuine cross-hauling. You might have in some industries something that resembled it, where the product of one manufacturer is not just the same as the product of another manufacturer, and where the time is a little different, and so on.

Trial Examiner Norwood: That would be the case where the sale was based on other than economic conditions—

The Witness: Yes.

Trial Examiner Norwood: —considerations?

The Witness: Yes.

Perhaps I should add that to my answer, that there are, of course, possibilities that someone may buy from someone because they are a friend of his, or something of that kind.

5426 By Mr. Robison:

Q. In your economic studies, have you noted any examples to support the conclusion that cross-hauling is indicative of competition?

Mr. MacIntyre: I object.

May we have that question read?

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Answer.

A. I can't say that I have made a quantitative or specific study of a particular industry, but it does seem from the general practices of manufacturers of making price concessions—I am familiar with that—

Trial Examiner Norwood: You have told us that, but he asked you about this particular thing.

The Witness: Yes, and these price concessions, Your Honor, do lead to this cross-hauling, and they do come about as a result of competition.

By Mr. Robison:

Q. Is there any principle of economics whereby nearby customers are naturally entitled to a price advantage by reason of their proximity to points of production?

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A. No, sir; I do not think so. The only principle that I would recognize on that point is that—

Trial Examiner Norwood: Economics does not
5427 cover that point at all, does it, as to whether they are entitled to the advantage to their proximity to the mill?

The Witness: Economics, I think, does—

Trial Examiner Norwood: It goes straight to the effects of their being there, the effects of their receiving.

The Witness: I think that economic reasoning does throw some light on this, as to whether people so located would likely get the benefit of it.

Trial Examiner Norwood: Yes.

The Witness: Now, as to whether they should naturally, or whether they have a natural right to it, I was just going to say, Your Honor, to be consistent with your comment, that—

Mr. MacIntyre: Now, I object to the witness attempting to state whether or not somebody has or should have a natural right to something.

The Witness: I am not.

Mr. MacIntyre: Well, I understood his—

Trial Examiner Norwood: Let him finish his answer. Go ahead.

The Witness: I was just going to say that I do not think that economic reasoning can throw much light on this concept of natural rights. I think it can throw some light on the question of what buyers in a particular situation are likely to get, what benefits they are likely to get. And
5428 if I may use an illustration, you have a manufacturer—

Trial Examiner Norwood: Now, he asked whether or not there is any principle in economics bearing on this right. I think you can answer him directly on that and go into these other matters later.

The Witness: Perhaps my answer is sufficient, then, as a direct answer.

By Mr. Robison:

Q. Can you give us any examples in which the advantages of location accrue to the seller?

A. Yes.

Let us say that we have a mill located at a certain point; or point A, which is charging prices based on its own figure of $10, let us say, and there is a market removed from this

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one by $5 freight. This market, which we will call M, would be paying $15 under those circumstances.

Now, some manufacturer, or prospective manufacturer, recognizes the situation and concludes that by establishing his plant right close to this market M he would be able to get a better price than would exist at other places and it might yield him a rather handsome profit. Therefore, he decides to locate his plant there, and he does under those circumstances. I think I am safe in concluding from the way economic men reason that in the first instance he would charge $15, which is the going price. Indeed, that was
5429 the reason for his establishing the mill there, was to get this price of $15.

Now, if this new manufacturer who establishes himself near to market M decides that he wants to expand and needs therefore to keep this market M all to himself, he may enter into such rivalry with the manufacturer A back here as will take the form of a price reduction below this $15. He may go down to $12. He may even go down to $10. And thus in the long run as a result of those circumstances the people in the market M would have gotten the benefit of the competition that came about. But I do not think it would be fair to say that they had any natural right to it, and one can't predict that they would immediately get it; immediately the benefit would likely redound to the new mill that established itself near the market.

Mr. MacIntyre: I move to strike that part of the witness' answer where he attempts to say whether someone has a right to something.

Trial Examiner Norwood: He says that he can't say that it has.

I will allow the motion.

By Mr. Robison:

Q. If a company were contemplating building a new manufacturing plant, as an economist what would you expect the responsible officers of the company to take
5430 into account in determining where to locate the plant?

Mr. MacIntyre: That is objected to. It is not part of economic theory that is called for. It calls for the psychology on the part of particular people involved with particular problems.

Trial Examiner Norwood: Read the question.

(Question read.)

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Trial Examiner Norwood: Well, that is merely a form of expression. He means what are the economic considerations to locate the plant.

You may answer it from that standpoint.

The objection is overruled.

A. The economic considerations that a manufacturer would have in mind are numerous. I am not sure that I will mention all of them, but certainly he will have in mind the market to which he can sell, and the price existing in that market, and the cost of reaching that market. Those would be important considerations, and perhaps the relevant ones here. He would also have in mind the cost of materials, labor supplies, and numerous other factors of that kind.

By Mr. Robison:

Q. If the choice of location should be near a large market, in your opinion would the savings in transportation costs be likely to accrue to the customers in that market?

Mr. MacIntyre: I object to that. It does not call
5431 for any part of economic theory. That is speculation dealing with factual matter.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Under ordinary economic conditions or under what?

Mr. Robison: Yes.

Trial Examiner Norwood: Under your hypothetical statement there?

Mr. Robison: I would say under ordinary economic conditions what would he as a student of economics expect.

Mr. MacIntyre: If he wants to limit that to the situation outlined in the hypothetical question A, that is one question; if he wants now for this man to speculate on what would happen under some other situation, that is not proper. It does not call for economic theory at all.

Mr. Robison: This matter is not hooked up—

Trial Examiner Norwood: I overrule the objection.

Answer it as for ordinary conditions.

A. At the outset I would not expect the buyers of the market to receive the benefit of the lower cost of transportation. In the long run, as I explained in the previous answer, competitive conditions might bring it out if the price was lower. It is the common phenomenon.

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A pop corn stand is established at a circus. The
5432 object is to get to a market which will pay—that object may be to get to a market which pays 10 cents for pop corn instead of 5 cents for pop corn. A man establishing the market does not immediately drop the price to 5 cents. If enough of them drop the price to 5 cents, then competition might force him to drop it to 5 cents.

Trial Examiner Norwood: That is under more or less monopolistic conditions, isn't it?

The Witness: Well, whether—that would not be a necessary feature of it. If any business man observes a situation in which—observes some town in which prices are pretty good, and he goes and locates in that town, he does not go in immediately and reduce the prices to what they are in other towns. That would defeat the object of his going in.

Trial Examiner Norwood: I see.

The Witness: In the long run, if enough of them do it prices will have to come down and therein the consumer gets his protection.

By Mr. Robison:

Q. Under the conditions assumed in hypothetical question A, in your opinion as an economist, are there any economies to the conduit manufacturer on sales made to customers in more remote markets which might offset the savings on freight to nearby customers?

5433 A. Well, there are economies in the sense that you are getting extra sales over what you could get in your nearby market, and these extra sales mean better utilization of plant. At least that is the ambition of the manufacturer. I am not saying that the policies of other manufacturers may not defeat that, but the manufacturer would be seeking that larger volume that will give more complete utilization of plant and would result in economies.

Q. If a mill, which I will refer to as mill A, located near a market receives a higher net amount per ton of product sold than is received by another mill, that I will refer to as mill B, located near supplies of materials, does that indicate to you, as an economist, that the customers of mill A necessarily are deprived of any material advantage?

A. No, it does not. As I explained in my previous illustration, the customers in the mill—in the first market are not paying a higher price, or there is no reason for assuming they are paying a higher price, because of any price that is charged to the people in the other market.

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And, furthermore, your question deals with mill nets, that is, with the amount that is received by the manufacturers, which would appear to be a matter of no direct concern to the buyers. They are interested in what they have to pay, not in what is left to the manufacturer after he has deducted from that price certain costs, some of which
5434 may be peculiar to him.

Then there is the further—well, we will pass that. That is enough.

Q. I want to refer back for a moment to the matter of uniform f.o.b. mill prices which we were on a short time ago, and I ask you whether, in your opinion as an economist, if all the manufacturers of rigid conduit were in effect forced to quote uniform f.o.b. mill prices, might some economies result therefrom?

A. Yes. Emphasizing the word "might" on a uniform f.o.b. method each manufacturer would be selling within his own market area. There might be less costs of selling, that is, costs of salesmen, on the ground that the consumers in these markets really have no practical choice. They will have to buy from the mill located in the area, or pay a higher price to get it from someone outside. And then with the various—furthermore, with the various conditions that I placed in the answer relative to cross-hauling, there is the possibility that there might be a saving on that score.

Q. In your opinion as an economist, would the economies obtained under a uniform f.o.b. mill price plan be the economies of competition or the economies of monopoly?

Mr. MacIntyre: I object to that question. It is not only a leading question, but it does not call for a statement of economic theory.

5435 Trial Examiner Norwood: I sustain that objection. Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. Robison: Then I will ask this question:

By Mr. Robison:

Q. In your opinion, would any advantages of competition be sacrificed under a uniform f.o.b. mill price plan?

Mr. MacIntyre: I object. That is the same question in other words.

Trial Examiner Norwood: Objection overruled.

A. Yes. These might be considered as offsetting factors to the ones I have just mentioned, that you would lose the

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advantage under the uniform f.o.b. plan of this point-by-point competition which brings several sellers face to face, vying for the patronage of buyers at different points. That, I think, is highly important. It develops an alertness and desire to serve the consumer well that I cannot believe would be present when a manufacturer realized that he was the only practical supplier within a certain market. That is one.

Another thing, I think, is, as I pointed out before that through this freight absorption and penetration of other markets, which would be out in the case of the uniform f.o.b. mill plan, you do get a stability of demand and volume of business for individual mills, and that stability does
5436 result in economies, economies in unit costs of production.

By Mr. Robison:

Q. Dr. Nourse, who has testified in this case, in his testimony referred to administered prices.

As an economist, what do you understand by the term "administered prices"?

A. The term "administered prices" is one that has come into vogue just recently. I am not sure that it has a very generally accepted meaning. To my mind it means prices that are administered; that is to say, prices that can be determined and are determined as a result of business policy. That is, a situation—there are prices which result from the business decision of some man to fix that price, as opposed to the prices that we sometimes think of in our simplified economic theory as being automatically determined by impersonal forces.

Now, the only excuse for the use of this term "administered prices" is to distinguish it on the one side from those prices that are determined in that automatic and impersonal way, and to distinguish it on the other side from pure monopoly prices, in which, of course, the business decision could be made without regard to what any other seller might be doing, and therefore the term "administered prices" is used to describe the process of selling ordinary manufactured goods.

Q. Well, as you understand the term "adminis-
5437 tered prices," are such prices competitive or non-competitive prices?

Mr. MacIntyre: I object. It is a leading question. Furthermore, it does not call for part of economic theory. The

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witness has just said that the term "administered prices" is not a part of economic theory, but it is a term which has more recently been used by economists to describe a condition.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Robison: I can't see how the question could be leading when it is asked in the alternative.

Trial Examiner Norwood: Well, using the term as you have described it there, you may answer.

Objection overruled.

A. The term is used to describe competitive prices, and I think I am safe in saying not only used by me; I have never heard it used in any other way, and there would not be any point to the introduction of the term if one had meant monopoly prices, because we had a perfectly good word for that. It refers to prices that are competitive in the situations that commonly prevail in manufacturing industries.

5439 Q. Professor Griffin, if you find quotations of producers who have differences in their production situation and in their cost, and they are all making the same quotation, would that indicate to you either a miraculous agreement on what is good policy amongst them or else some means of working out a uniform plan of quoting the same price as being desirable for the trade as a whole, for the group, whatever it might be?

5440 A. I assume you mean quoting a price in one market.

Q. Answer it on that assumption, please.

A. Yes.

No. It goes back to the axiomatic principle that prices in any given market for a homogeneous product, the buyers being well informed, have got to be identical prices, or have a very strong tendency to identity.

Manufacturers are perfectly aware of that fact, and when they quote prices in the market must take that fact into account, and the fact that they have different costs would not normally lead them to quote different prices if they had any reason for thinking that some competitor is going to quote a lower price.

The only condition under which I could imagine any one making a statement of that kind would be on the assumption that here was a market that had never existed before in

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which there were no previous price quotations,—utterly a new thing; but in a continuing market, such as we generally have for manufactured goods, that is not true, and there is a prevailing price in the market, and each seller coming in there knows that he must either quote that price or not sell there, or make an effort to change the price, and then you are going to come back to identity of price anyway.

5441 Mr. MacIntyre: I move to strike the answer. It is a matter of argument and nothing else.

Trial Examiner Norwood: Motion denied

Mr. Robison: The question—

Trial Examiner Norwood: Read that question originally.

By Mr. Robison:

Q. As an economist,—

Trial Examiner Norwood: Wait a minute.

Read the original question there. Read it.

(Question read.)

Trial Examiner Norwood: Go ahead.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. Robison:

Q. As an economist, would you expect each seller in any market to quote a price based on his cost?

A. Not if you have a continuing market and—or if you have any other reason for anticipating what the competitors are going to be charging in that market; then I would not expect the—a seller to quote—certainly not a manufacturer—to quote a price based upon his own costs. I think costs have relatively little to do with the question. An economic man tries to sell goods for what he can get

5442 for them, and costs may enter in to the extent of convincing him that in the particular—that, in view of the obtainable price in a particular market he had better stay out altogether, but costs are not going to influence him to go in and quote a price that he knows is not going to be acceptable.

Q. From your observation as an economist, how would you expect a seller in a competitive industry to decide what price quotations to make?

A. Well, I would expect him to determine what other possibilities he had of selling goods; if he is a manufacturer, the possibilities and advantages of expanding his

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production, and then the—then I would expect him to take into account the prices that were prevailing in the particular market, and if those prices were attractive to him, in view of the other considerations I have mentioned, then he would quote that price. He has—

Q. If—I beg your pardon. Had you finished?

A. I think that is perhaps a sufficient answer to it.

Q. If each seller does not base his price quotation on his cost, does that indicate to you a lack of competition?

A. No.

Q. If a seller seeks to sell both in a local market and in more remote markets, would you expect him to be governed more by cost in his price quotation in the more remote markets than in the local market?

5443 A. Oh, I don't think he would be governed primarily by cost in either case, except at the limit that he would withdraw from a market if the price obtainable were too low relative to his costs, although he won't always do that. A manufacturer may often sell at less than cost, but if we are going to try to measure this effect of cost in the distant market compared to the nearby market, I think there might be rather less effect in the distant market than in the nearby market on the ground that these are additional sales over and above what he can get in the market that he would consider his—I am tempted to use the word "natural market"—but his nearby contiguous market. Since they are additional units of sale, he may regard that he only needs to consider direct out-of-pocket costs instead of the average costs for the whole volume.

Q. In your opinion as an economist, is it proper to say that there would be nothing in the forces of competition which, in the absence of a worked-out understanding, could bring prices in delivered markets to the same point?

A. Quite to the contrary, no. Prices in a delivered market have got to come to the same point, if we are dealing with a homogeneous product and informed buyers, regardless of the cost of the people who are selling in those markets.

Q. What is your opinion as to whether a purchaser may expect normally that the delivered cost to him as

5444 quoted on future sales or for future sales by a number of sellers who are located at different places variously freightwise from his destination will be identical or uniform as to all sellers quoting?

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A. I think, for the reasons that we have developed in the previous few answers, that he would anticipate that the quotations in a continuing market might very well be uniform. I don't know that one can—

Trial Examiner Norwood: Read that question.

Finish your answer.

A. (Continuing.) I don't know that one could go so far as to say that he would expect always that they would be, but those forces that I have just mentioned would make it a rather reasonable expectation, I should think.

Trial Examiner Norwood: Read the question and the answer.

(Question read.)

Trial Examiner Norwood: I have the answer.

By Mr. Robison:

Q. If there were an identity of quoted prices of a standardized commodity at a particular destination from which the sellers were located at different distances freightwise, would that identity of quoted prices indicate to you the absence of a competitive market?

A. No.

5445 Trial Examiner Norwood: What is your pleasure about lunch?

Mr. Robison: I beg your pardon?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. Robison:

Q. If it were assumed, further, that the competing sellers who chose to quote at this particular point knew from prior sales made at that place or from information conveyed to them by their salesmen that the market prices on that commodity had reached a common level, would the identity of prices quoted for the future necessarily be inconsistent with your concept, as an economist, of a competitive market?

A. No, it would not be.

Q. If you were to assume a seller makes a practice of accepting from his various customers different sums of money per unit for his standardized product, and if there were not differences in the quality or cost of selling involved, on what economic theory can that practice of the seller be explained?

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A. Why, it would be explained on the ground that the seller found it necessary to vary his prices, and perhaps that would result in varying his mill nets in order to meet competitive conditions in particular markets.

5446 Q. If a seller makes a practice of accepting from his various customers different sums of money per unit for his standardized product, and if there are not differences in the quality or cost of selling involved, does that indicate to you, as an economist, a lack of competition?

A. No. On the contrary, it tends to suggest the presence of competition.

Mr. Robison: That is all I propose to ask on direct examination, Mr. Examiner.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Recess until 1:45, and we will meet in Room 388.

(Whereupon, at 12:20 o'clock p. m., a recess was taken until 1:45 o'clock p. m. of the same day.)

Afternoon Session.

5447 Room 388,
1:45 P. M.

Trial Examiner Norwood: Proceed. Cross-examination.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

CLARE E. GRIFFIN resumed the stand and testified further as follows:

Cross-Examination by Mr. MacIntyre.

Q. Dr. Griffin, in your testimony in this case have you relied upon any knowledge or thought of conditions in the rigid steel conduit industry or assumptions concerning them other than those which were included in hypothetical questions which were put to you by counsel for the Respondents?

A. I have not, with one possible exception I remember, to which you called attention this morning, when I said

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that I would assume that something might be true, and it was outside, I believe, of the hypothetical question. I believe that is the only instance.

Q. Can you specify that one now?

A. Yes, I can specify that. It is one in which I said that I would assume certain things as to the way architects would react. The—I would like to say that my remark does not apply to my whole answer. The an-
5448 swer was broken in two parts, I think you will find, and the first part had to do with a well-established economic principle which—and the necessary assumption is readily provided in the hypothetical question.

Q. So as to all other facts, you have relied in your answer—that is, as to all other facts concerning the rigid steel conduit industry you have relied solely upon the assumptions included in hypotheses placed before you by counsel for Respondents?

A. I have attempted to do so, and I think have done so.

Q. And this exception you spoke about—

A. Yes, sir.

Q. —was one as to what you would suppose that architects would do—

A. Yes.

Q. —and which you included in an answer this morning and to which I objected; is that correct?

A. Yes, sir.

Q. Do you have any factual knowledge—I mean any knowledge as to the facts of the manner in which pricing methods are carried on in the rigid steel conduit industry?

A. Well, obviously, the facts are set forth in the hypothetical case.

Q. Well, other than the assumed facts which have been placed before you in this case by counsel for the
5449 Respondents, do you have any knowledge at all of the facts as to pricing methods in the industry?

A. I do not think I know of any things about the industry that are not covered in the hypothetical statement.

5451 By Mr. MacIntyre:

Q. Now, referring to this hypothetical question, which begins at page 4902, if the first sentence in
5452 paragraph 3 of that question were stricken from it; and then further on the sentence concerning the ag-

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gregate of over 75 percent of the productive capacity of the conduit industry are located in the Pittsburgh area and from which the freight rates to destinations outside of that area are in general the same as freight rates from Pittsburgh to the same destinations were also stricken; and the last sentence in paragraph 8 were to be stricken; and the first sentence in paragraph 9 were to be stricken; the first statement in paragraph 10 were stricken; the second sentence in paragraph 11 were stricken; the second sentence in paragraph 12 were stricken; the second sentence in paragraph 13 were stricken; the first sentence in paragraph 16; the first sentence in paragraph 19; the first sentence in paragraph 21—now, if all of those sentences were stricken or so changed that the substance of them, or at least the substance of vital parts of them, were changed, would that affect your answers to that question?

A. Well, in the first place—

Mr. Robison: Just one moment, please.

Mr. Examiner, there again we have a question in the nature of a blanket question. I have no objection now to the specification of the various parts of the statement of facts for the hypothetical question, but if the witness is going to be asked whether some opinion that he expressed based on that would be modified, then I think that
5453 his attention should be called to the particular opinion to which reference is made. I have not counted them up, but I should say that there were at least a dozen questions which were based on the assumptions in this hypothetical question A, and how the witness can be expected to answer as to whether any of that dozen or more set of opinions would have been modified if something had been omitted I don't quite see.

Trial Examiner Norwood: Well, as an approach to it I think he may ask him if he would change any of his answers made on the basis of that blanket question. In other words, the original question was a blanket question.

Mr. Robison: The statement of facts was a blanket question, but as we proceeded we had, as I have said, I think at least a dozen and probably more separate opinions that were asked in separate questions which were based on that statement of facts, or some part of it.

Mr. Gilpatric: I want to add the further objection that we have two questions addressed to the witness. One is if we dropped out these specific parts; another one is if we changed them in certain vital respects.

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Trial Examiner Norwood: Counsel has a good point there.

Mr. MacIntyre: Well, let him answer the first part first.

By Mr. MacIntyre:

If those sentences were taken out of the question,
5454 would you find it necessary to modify your answers which you based on that assumption?

Trial Examiner Norwood: As the question stands now, I will overrule the objection.

Answer the question.

The Witness: I am sorry. I did not get that question.

Trial Examiner Norwood: Read it.

(Question read.)

A. What assumption?

By Mr. MacIntyre:

Q. The assumption carried in the hypothesis A, which begins on page 4902.

The Witness: Your Honor, I can't answer that question. I can't remember now all of the questions—

Trial Examiner Norwood: Well, you have there in writing before you the same as the original question.

The Witness: —the answers, I mean, that gave, and whether those answers, which involve several hours of testimony—

Trial Examiner Norwood: Can't you look at that and state whether it would cause you to change any of your answers based on that hypothesis there?

Mr. MacIntyre: The witness has gone through that question and has marked the sentences and knows
5455 which ones I am talking about.

The Witness: I do not recall particular answers that would have been affected, although there might well have been such. I will be glad if you would specify particular answers you have in mind.

By Mr. MacIntyre:

Q. Do you think it has been important to you as an assumption in your answers to questions put to you by counsel for the Respondents concerning conditions in the conduit industry that the conduit manufacturing plants of seven of them, including at least two of the principal conduit manufacturers and comprising in the aggregate

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over 75 percent of the productive capacity of the conduit industry, are located either at Pittsburgh, Pennsylvania, or within an area surrounding Pittsburgh, from which freight rates to destinations outside of that area are in general the same as freight rates from Pittsburgh to those destinations respectively?

A. I do not recall any answer that would have been affected if that statement had been left out.

Q. What portion of the conduit, in your opinion, if produced at locations other than Pittsburgh below the 75 percent specified, would influence your answers?

5456 Mr. Gilpatric: I must object to that question simply on the ground that I have no comprehension of it nor ability to object to it.

May we have it read?

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Do you understand that, Doctor?

By Mr. MacIntyre:

Q. In other words, what proportion—

The Witness: I can guess at it, but what it says is what portion of conduit produced outside of Pittsburgh below 75 percent—I don't know what—

By Mr. MacIntyre:

Q. Well, the sentence that I just read to you specifies that 75 percent of the conduit is produced in the freight area of Pittsburgh. Now, I am asking you to state what proportion of that 75 percent would you find it necessary to be produced there in order to consider that the hypothesis has not been changed in any vital respect.

A. I did not say would not be changed in any vital respect. I said I did not recall any specific answer which I gave that would have been affected if that statement had been omitted altogther.

Q. Do you consider that it is of any importance 5457 as to whether or not that at or near one of the principal basing points there is any production or any particular percentage of production in an industry?

A. Important from what point of view?

Q. Well, the point of view of pricing, of price making.

A. I don't think you could state any percentage of an

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industry that would need to be at one point in order to make use of that method a natural method of pricing.

Q. Would you consider it to be as normal a method of pricing as you have stated it to be if, instead of the 75 percent being in the Pittsburgh freight area, as is assumed, 95 percent of all the production were located at other parts of the country, but Pittsburgh nevertheless was used as the principal basing point for pricing purposes?

A. I do not recall that I indicated anything about the degrees of normalcy. I said it would be a method that I thought could grow up consistently with the existence of competition. I would not in order to give that answer have to know that 75 percent of the output was at that particular point, or at a basing point. In fact, it is conceivable that there might be a very small amount of production at a basing point.

Mr. MacIntyre: Please read the question to the witness.

(Question read.)

5458 By Mr. MacIntyre:

Q. Will you please answer that question, instead of the one that you did answer, Doctor?

Mr. Robison: I submit the witness answered that very question, Mr. Examiner.

Trial Examiner Norwood: Please answer that question.

The Witness: He is asking me, if I understand correctly, whether it would be as normal as it would be in this situation. I do not mean to quibble, but I do not know what you mean "as normal."

Trial Examiner Norwood: Would it be normal at all?

The Witness: It would be quite possible. It is conceivable.

By Mr. MacIntyre:

Q. You state that it is conceivable from an economic standpoint that manufacturers of rigid steel conduit would select some point other than their point of manufacture and name it as their basing point for pricing purposes and let all prices be made up on the basis of that base price of that location; is that correct?

Mr. Gilpatric: I object to the question, because he did not say in his answer "all prices," and you did not state that in your assumption in your question.

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Trial Examiner Norwood: Objection overruled.
5459 Answer the question.
The Witness: I am sorry. I will have to have it read.
Trial Examiner Norwood: Read it.
(Question read.)
A. Well, it is conceivable, yes.

By Mr. MacIntyre:

Q. And is it normal for an economist to expect that that would be the case in a competitive industry?
A. You might have a point in which competitive forces converge, leading a manufacturer to quote his price as of that point and to quote other prices in areas surrounding that by reference to that price, and if a manufacturer did that, then other manufacturers might find that it was necessary, if they were going to sell in that area, to conform to that practice.
Mr. MacIntyre: Please read the question to the witness.
(Question read.)
Mr. MacIntyre: Now, I would like for the witness to answer the question. He can give all the explanations he cares to afterwards.
Trial Examiner Norwood: Yes.
Please answer the question as to whether or not that would be normal. Not as to whether or not it is conceivable or possible, but whether it is normal.
5460 Mr. Gilpatric: Mr. Examiner, I submit the question is not whether it would be normal. The question is, would it be normal for an economist to expect that.
Trial Examiner Norwood: That is right.
Mr. Gilpatric: Now, personally, I find it difficult to appreciate what the question is intended to mean. Possibly the witness does.
Mr. MacIntyre: I can put another one if he answers this.
Trial Examiner Norwood: Go ahead.
Would it be normal to expect it?
The Witness: I think my answer is an answer to that question, and that is that it might come about. If you mean by "normal"—if you mean that that is the usual situation in basing-point methods, I would say no, I do not think it is. It is not normal in that sense, from my general observation of basing-point methods.

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By Mr. MacIntyre:

Q. From your observation of basing-point methods, that would not even be normal as to basing-point practices, would it?

A. Well, it is not normal in that it is the most common method or common situation.

Q. And is there any part of economic theory that carries any statement of principle to the effect that it would be normal for manufacturers to price their products in such way?

5461 A. I do not know of any one principle that bears on that specific point. Principles do not run in that way. But it is normal for manufacturers to attempt to meet competitive conditions as they arise point by point, and if a manufacturer, as I explained a moment ago, selected a point which was not his point of production as the basis for his pricing, then that would lead other manufacturers—it would very reasonably lead other manufacturers to follow him and conform to that method, and therefore in that sense it is consistent with economic principles.

Q. Is there any principle of economic theory which is to the effect that it is normal for manufacturers to set prices upon their merchandise as of locations far removed from where they produce them and can make them available to customers?

A. I do not know any recognized principle of economics that would be precisely on that point; but, as I have just said, it is a well recognized principle of economics, first, that you have identity of prices in the individual markets, and that if a manufacturer is going to sell in an individual market he has got to meet the prices that exist in that market, and so growing out of that I think you might find that situation which you are describing.

Q. Now, when you speak of markets in the sense which you just used it, you are using it in the sense that you first used it in your testimony here, that is, that they were

5462 separate markets; is that correct?

A. Right.

Q. And where did you get the thought that they were separate markets? What led you to believe that they were separate markets?

A. That what were separate markets?

Q. The locations to which shipments of conduit are made.

A. Well, I would conclude that they were separate markets because, as I understand it, there are different prices emerging in these markets, and the conditions of demand and of competition impinge upon these markets in different ways so as to result in different prices, and that is what I meant by different markets.

Q. And you assumed and concluded that they were separate markets in all of your answers where you have made reference to markets in the rigid steel conduit industry; is that correct?

A. That is correct. I should say that I recognize that the markets are related, of course, as all markets of transportable goods are related, whether under a basing-point method or anything else; but I was thinking of them as of the different points of sale as separate markets; yes, sir.

Q. And you have assumed them to be separate markets in all of the answers that you have given to the questions that related to the markets of rigid steel conduit; is

5463 that correct?

A. Well, again, I can't recall every answer that I have given, but I think I have all the way through.

Q. In other words, that assumption has been involved in all of your discussions about rigid steel conduit markets; is that correct?

A. Yes.

Q. Now, just a moment ago you made reference to relation between markets by virtue of transportation. Will you tell us more about that relation based on transportation and what you meant by that?

A. I think my statement was that all markets of transportable goods are, of course, related.

Q. In what way?

A. Well, in that some goods can be moved from one market to another, or that the common source of supply can—from a common source of supply you can send goods from one place to another. We have alternative choices. In that sense all markets of transportable goods would be related one to the other.

Q. Does this theory relating to transportable goods and through transportability involve transportation from one market to another through still a third market or from one to another by the lowest transportation cost available?

A. You can't specify. All one could say is that when you have any product which can readily be moved
5464 from one place to another, then the prices in those two places can't be utterly independent one of the other.

Q. But they would be, according to economic theory, related to each other by virtue of the cost of transportation of the good between those two markets; is that correct?

A. Well, partly so, and partly also of the relative costs of reaching these two markets from common sources of supply, or there may be alternative sources of supply—any number of situations.

Q. If the transportation cost of a good between two so-called markets is less than the transportation cost from any other point to either one of those so-called markets, which is the controlling factor as to the relation of each other on the theory of transportable goods?

A. And what?

Q. I think that I have completed the question.

Mr. MacIntyre: Read it.

Trial Examiner Norwood: Read it.

(Question read.)

A. I don't think that you could answer that question. If you have a source of supply perhaps a long ways removed from two markets, the cost of transportation to these two different markets is going to be a factor. Also the ultimate possibility of moving goods from one market to another is going to be a factor. I don't think you
5465 can say with assurance that one is more important than the other.

Q. Well, with respect to this theory of transportable goods from one market to another, is it your testimony, as an economist, that the cost of transportation between the two so-called markets is a factor that is not more important than the matter of transportation cost from any other point that is farther removed freightwise?

A. If I see just what you are getting at, I think I would say yes.

Mr. MacIntyre: Read the question.

(Question read.)

Q. Your answer is "yes"? Isn't that correct?

Trial Examiner Norwood: He says he thinks so.

A. It is not more important, not necessarily more im-

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portant, than the other. I don't think you can generalize on that. At least I can't, just at the moment.

Q. Well, what is the relation between two points which you term separate markets, far removed from the point of production but which are relatively close together?

A. Well, one thing is that the difference in the market prices as between these two markets would not normally—assume that economic forces are working smoothly—be greater than the cost of transportation from one of them to the other.

5466 Q. If that is true, then why, in industries that use the basing-point industry—basing-point method of pricing, the question of diversion from one so-called destination to another is a problem which must be fought against and be handled to prevent diversions?

Mr. Robison: I object, Mr. Examiner, on the ground that the question assumes that in all industries using the basing-point method the matter of prevention of diversion of shipments is a problem which must be dealt with. There is no evidence in this case that in this industry we are talking about it offers any problem whatever.

Mr. MacIntyre: I can only cite the witness' testimony on direct examination.

Trial Examiner Norwood: Objection overruled.

The Witness: May I have the question again, please, sir?

(Question read.)

Mr. MacIntyre: Cut out "fought against."

Trial Examiner Norwood: Well, is that assumption correct, according to your knowledge, information, and belief, that the matter of diversion is a problem that must be handled in those circumstances?

A. In some industries the problem—where some basing points exist I understand that it is a problem. I do not know that it is a problem in this industry.

5467 Trial Examiner Norwood: Well, you can't answer the question with respect to those industries?

The Witness: Well, I don't think the—this question of the cost of transportation from one point to the other is the crux of that problem at all. If we have a manufacturer located at point M and we have out away from him market A and out a little farther away market B, now, at market A it may be possible for him, because of competitive conditions, to take some price that he has in his mind

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at his mill and add freight and thus determine the price that is going to be charged at A. When he gets on farther to market B he may find that he is then running into an area in which prices quoted by another manufacturer plus freight will give a lower price than his price plus freight. He, under those circumstances, might want to make a price concession to market B. Now, the problem of diversion, as I understand it, is a problem of a buyer from town A coming to the mill and saying, "I come from B and I want this price which is quoted at B," or, putting it another way, a buyer at B may very well go to the mill under an f.o.b. mill plan, go to the mill, buy his product, representing that he is from B which in this case would be correct, getting a lower price because of the competitive conditions existing in B, and then shipping the goods out to A, thereby introducing goods into A at a price which the manufacturer never intended to make in favor of the buyers at A.

5468 That is my understanding of the diversion problem, and it doesn't seem to me it is the matter of the cost of transportation as between markets A and B. I don't see that that comes into it.

By Mr. MacIntyre:

Q. You recognize that it is common for the location of the basing point to also be a point of consumption of the goods which are priced at the basing point; do you? For example, Pittsburgh could be regarded and is regarded as a point of consumption of rigid steel conduit. Is that one of these separate markets as you conceive them?

A. Yes, sir.

Q. Well, if it has its normal relationship, then, with each of the other so-called separate markets, why should any manufacturer have any regard for other markets in the sale to any one of his customers, irrespective of where they came from, in his sale of conduit ot such customer at Pittsburgh? Why should he have any regard for any other point?

A. You mean when he is quoting at points other than Pittsburgh?

Q. Yes.

A. Yes.

Q. If that customer—

A. Because—

Q. —should come to Pittsburgh and want conduit there?

5469 A. Because in some points the price quoted by some manufacturer at some other point than Pittsburgh plus freight from that point to the market in question would be lower than the amount that would be derived by adding the Pittsburgh price to the freight, obviously.

Q. But if those two points—I mean if the point outside of Pittsburgh to which you have just made reference has its normal relationship with respect to transportation cost on conduit to Pittsburgh, why, then,—and then they are separate markets—why, then, should the manufacturer of conduit at Pittsburgh hesitate to sell to a customer in Pittsburgh, irrespective of where the customer cared to carry the goods after they are sold?

A. Well, I think for the reason I have just given you in this rather lengthy discussion of diversion. He would not want to sell to a person in Pittsburgh regardless of where that person was located, because in some cases he has to make concessions below the Pittsburgh base, if you wish to call it that, plus freight, and your buyers are likely to represent that they do come from those points, or, secondly, buyers will come from those points and buy goods at those special prices and send them into the other points in the market.

Q. And you are saying in that connection that your so-called concession is not equivalent to the transportation cost between the two points; is that correct?

5470 A. Oh, it is not. It is not.

Q. And that is—

A. But it is related to a transportation cost from some other point.

Q. Well, how, then, does Pittsburgh and the point from which the customer came have any relation on a basis of normal transportation cost between the two?

A. It does have a relationship as long as you are within an area in which the Pittsburgh price plus the freight determines the price in the—in this outside market. As long as that is true, obviously there is a close relationship based upon transportation cost from Pittsburgh. When you get into other areas in which competitive conditions are determined by costs of transportation from some other point, well, then, the Pittsburgh price fails to control. I am sorry if I—it seems elementary to me. I don't mean

to be missing your point. There may be something else you have in mind.

Q. The thing I can't understand—I would like for you to clear us up on that—is why a manufacturer would find it to his interest to refuse to sell a customer in Pittsburgh if he knew that customer was from some other location.

A. I think I have answered that two or three times. The reason he would not want to sell to the customer at Pittsburgh would be that this customer might well represent that he came from a town in—

5471 Q. Well, I am not asking you to assume that he represented that. I am asking you to assume that he is at Pittsburgh, now, and he doesn't say anything about where he came from but he just simply says, "I am a customer for conduit. I want to buy a carload here in Pittsburgh," and he says nothing else.

A. Then the reason would be that the Pittsburgh manufacturer would under those circumstances be selling to all buyers alike, since he does not know where they come from by your hypothesis, and that would mean that he would be able to sell only in that area in which the Pittsburgh price plus the freight yielded the lowest delivered cost to the buyers. In other words, we are talking about a uniform f.o.b. plan, and if this manufacturer wanted to make more sales than that, wanted to reach out into a territory in which—which would not be tributary, so to speak, or related to him, he would have to depart from that method of pricing, and he has no feasible way of departing from that method of pricing if he is quoting f.o.b. prices.

Q. How would it be to his interest to refuse to sell a customer in Pittsburgh who wanted to buy a carload of conduit at that location at the price at which the manufacturer was then offering conduit in Pittsburgh?

A. Well, I suppose if the price were high enough he would not object, but the price that he could make that would enable him to reach out for the market that

5472 he would like to cover would be a lower price than would be necessary for him to quote in order to get the business in his home market.

Trial Examiner Norwood: Does that answer that question?

The Witness: If you could convince—

Trial Examiner Norwood: Now, wait a minute, Doctor. Read the question.

I will ask you to answer the question.

(Question read.)

Mr. Robison: Is there any suggestion, Mr. Examiner, that the answer was not responsive to that question?

Trial Examiner Norwood: I thought it was not.

Mr. Robison: Well, the question is, "How would it be?" Now, what can the witness do but explain in answer what he considers to be the "how"?

By Mr. MacIntyre:

Q. Assume that a manufacturer with a rigid steel conduit plant located within 15 miles of the City of Philadelphia announces a basing-point price—a base price as of Pittsburgh and informs his customers in Philadelphia, in Washington, in New York, in Altoona, and in Pittsburgh, in fact, in all other locations in the eastern part of the United States, that they are to determine his delivered price quotations to them at their respective locations on the basis of this Pittsburgh base price plus a freight
5473 rate factor approximating freight from Pittsburgh to their respective locations. Assume that in arriving at the base price which he thus announces he has taken all conditions applying at all of these destinations and in mental processes thrown them all into a hopper, so to speak, and ground them up, out of which comes the base price which he announces; that he does in no other way name any price applicable to any one of them that is different from the price that he names at any other destination. Assume further that with respect to Philadelphia the demand for conduit, is declining at the same time that it is increasing in Washington, D. C.

How, under such circumstances in these markets which you term to be separate, that is, Philadelphia and Washington, have the factors of supply and demand expressed themselves in this manufacturer's announcement of his price?

A. I think the factors of supply and demand, if you wish to put it that way—although I think I used the term "demand and competitive conditions"—but I think those factors express themselves in the fact that the manufacturer at Philadelphia feels it necessary and only necessary to meet the competition of the Pittsburgh manufacturer in order to sell his conduit.

Q. I am assuming there that this Philadelphia manu-

facturer announced the price; he wasn't meeting anybody's price. He announced a new price, Doctor, for both—that is, for all points within the Pittsburgh base territory—

5474 A. But—

Q. —and he announced it on the basis of the Pittsburgh base price; he was not meeting anybody's quotation. Now, with that further assumption, what is your answer?

A. That would not change my answer.

Q. In other words, you would still say he was meeting competition at each of these places; is that correct?

A. Just a minute. Did you specify whether he had stated a—that he had stated a lower base price than was prevailing at Pittsburgh?

Q. No. We can assume that it is a higher price than had been prevailing there previously. And you say he is still meeting competition at all those destinations; is that correct?

A. Well, if he stated a higher price at—or a base at Pittsburgh than was prevailing at Pittsburgh—maybe there is some point that I am missing, but I don't see, then, how he can sell rigid conduit in any of this territory because he would be effectively underpriced by Pittsburgh at all points in his territory.

Q. No. Other manufacturers, of course, follow him in announcing the same one after he has announced it.

A. Oh.

Q. But we are focussing our attention on the man who announced it, now. Is he meeting competition when

5475 he announced the price and, if so, how?

A. Well, I would say in that fact of price change you would not call that meeting competition. That would be initiating a new price, and the others might be said to be meeting his competition.

Trial Examiner Norwood: Making competition, you mean?

The Witness: Yes. He initiates the price change and the others would assume they have to meet it.

By Mr. MacIntyre:

Q. Well, how have supply and demand factors peculiar to Philadelphia and supply and demand factors peculiar to Washington, D. C., expressed themselves in his announcement of that price, assuming, as you have assumed, then to be separate markets?

A. I wouldn't say that they had controlled the—that change in the price. I think he might very well under those circumstances be influenced by general conditions throughout the country, not merely in his own immediate territory. He might very well feel that, in view of the total demand for this product and all the circumstances that this man would take into account, that the time was ripe for a price advance, and he could make the price advance as well as anyone else. It would be effective presumably if the others followed him, of course.

5476 Mr. MacIntyre: I don't believe that answers the question. May we have the question read?

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Read his answer.

The Witness: Does that answer?

Mr. MacIntyre: No, I don't think he has answered the question.

Trial Examiner Norwood: Wait a minute.

Read the previous answer.

(Answer read.)

Trial Examiner Norwood: Do you want to add anything to that answer?

The Witness: I think that is an answer to the question.

Trial Examiner Norwood: I think it answers it.

By Mr. MacIntyre:

Q. Under those circumstances, however, the supply and demand factors peculiar to Philadelphia and the supply and demand factors peculiar to Washington expressed themselves in his announcement of the price?

Trial Examiner Norwood: He says he doesn't know whether they affected them at all.

Mr. MacIntyre: I am not asking him about the effect. I am asking him now how they have expressed them-

5477 selves in the price.

Trial Examiner Norwood: Oh, I see. I beg your pardon.

A. I don't think I have said, nor would I agree, that the supply and demand conditions in Philadelphia and Washington, under those circumstances would be the dominant factors involved in a price advance, and when I say that two markets are different—that they are separate markets, I am not implying that all of the conditions of demand and

supply are—prevailing in those markets are independent of conditions prevailing in other markets.

Trial Examiner Norwood: Well, did they express themselves appreciably in any way?

The Witness: I don't think that they would. An advance of price that is going to be effective over a whole area here would not presumably be determined by the peculiar demand conditions of Philadelphia, for example.

By Mr. MacIntyre:

Q. Or of Washington?

A. Or of Washington.

Q. Or of Pittsburgh?

A. Well, now, wait a minute. If you take enough of them you have a large part of the market of the United States, and, then, of course, it does.

Q. No. I am taking one of them at a time. What 5478 about Pittsburgh?

A. That is true.

Q. It would not affect it?

A. No. If you started to build a new skyscraper in Pittsburgh, I would not expect to see the price of rigid conduit all over the country to go up because of that.

Q. Or in New York?

A. No.

Trial Examiner Norwood: Well, would it normally go up in Pittsburgh?

The Witness: No.

By Mr. MacIntyre:

Q. Is it a part of economic theory, Dr. Griffin, that supply and demand in a market that is separate and apart from all other markets reflect themselves in prices at which goods are bought and sold in such market?

A. I think it is, but that assumes that you have truly separate markets. That is, if you have a market for a product that is not transportable—I suppose one might say conceivably ice cream or some highly perishable product—then it would be the demand and the supply conditions of that particular market that would determine the prices in that particular market.

Q. Is it your testimony that it is not a part of economic theory that even as to transportable goods that supply

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and demand factors in a true separate market, one
5479 that is apart and aside from all others, determine the prices that are paid for such good in that market?

A. In that market? You mean in the several markets?

Q. No. I am talking about this—

Mr. MacIntyre: Read the question.

(Question read.)

A. In a true separate market, that is 100 percent insulated market that has no connection whatever with the outside world, of course, demand and supply conditions in that market determine prices in that market.

Trial Examiner Norwood: We will have a ten-minute recess.

(There was a short recess taken.)

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Now, Professor Griffin, keeping in mind these assumptions that you have made about this manufacturer whose plant is located within about 15 miles of Philadelphia and who was involved in this Pittsburgh base price that we have discussed, where have the forces of competition converged in the naming of that price—so as to result in the naming of that price?

A. Well, I should say that was converging in the various different points at which that price is—to which that price is applicable. That is, the different towns in which this Philadelphia manufacturer sells his conduit.

5480 Q. In what way has it converged and the convergence expressed itself in his announcement of that price at each of these places?

A. In that he knows that the—two things have to be said: One, that he knows that the price at Pittsburgh determines a price that may be offered in these different towns. If he chooses to meet the competition of the Pittsburgh seller, then that would explain the statement of his pricing method in terms of Pittsburgh.

Now, there is the other question, as to why he raised that price which, to my mind, has nothing to do with the general pattern of pricing, and that would be determined as the result of the convergence, you might say, of the conditions of demand and supply throughout the whole country perhaps, at least throughout the whole eastern part of the country.

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Q. In other words, we have a convergence of the forces of competition there flowing from Pittsburgh in all directions instead of flowing into a particular section. Is that your understanding of the term "convergence"?

A. No. I didn't say that they flowed from Pittsburgh.

Q. Well, just where have these forces converged and expressed themselves in the naming of this Pittsburgh base price as of Pittsburgh?

A. I think I have explained that. If you are
5481 asking what are the forces and how did these forces converge leading this man to increase the price—

Q. No, I am asking you—

A. —if you are asking that—

Q. I am asking you where they converged, where these forces converged.

A. They converged at the several markets where this man is selling his goods.

Trial Examiner Norwood: They converge at more than one market?

The Witness: Yes, and for that reason you have different prices at the different markets, and that is what I mean by "different markets." Conditions—there are places where conditions of demand and supply—somewhat different conditions of demand and supply converge to give different prices.

By Mr. MacIntyre:

Q. Well, I am asking you to assume that the base price as of Pittsburgh which is used to determine the delivered price quotation in Philadelphia is exactly the same as the one which is used to determine the delivered price quotation in Washington, but that the supply and demand forces in Philadelphia are far different from what they are in Washington; in fact, they are flowing in opposite directions.

A. That would have very little to do with the case because—

5482 Q. Where have—may I complete the question?

Where have the forces of competition converged in the naming of the price applicable for Philadelphia and the price applicable for Washington?

A. They have converged in Philadelphia and in Washington, if you are thinking of them both as consuming markets, and the forces of demand and supply are different in those two markets because—

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Q. Well, how has that convergence expressed itself to show up in the announcement of the price, the differences in the supply and the demand factors in one of those places compared with the other, or contrasted with the other?

A. The differences in supply and demand conditions in the two markets lead to different prices in the two markets. Now, if you are—

Q. I am assuming, though, Doctor, that the base price that applies to each of those two places is exactly the same and not different, as you tried to assume.

A. That is quite irrelevant, I think, to this particular point.

Trial Examiner Norwood: You think that the same price, if it is based on the same mill price, and only the actual freight added to make the delivered price at both places,—would you call that a different price?

The Witness: Yes, you would have different prices
5483 at Philadelphia and Washington because I assume—may be mistakenly—but I assume that the freight added to the base price in Pittsburgh, which is the location of this competitor, is different for Philadelphia than it is for Washington; so, therefore, the manufacturer will be quoting different prices in Philadelphia than he will in Washington. Therefore, you have different conditions.

Trial Examiner Norwood: Would the difference of those prices be a reflection of difference in supply and demand at those two different places?

The Witness: Yes.

Trial Examiner Norwood: It would affect that?

The Witness: Yes.

Trial Examiner Norwood: Suppose it amounts to just the same as the differences in the freight.

The Witness: Yes, that is, the supply condition, that is different. It is the difference in cost of getting the goods to those different markets from this large supply center at Pittsburgh.

By Mr. MacIntyre:

Q. What about the demand factor? Does that have anything at all to do with respect to influencing price in a market?

A. Very little, I should say, in the particular market. The demand factor over the country as a whole has something to do with this other matter that you were speaking

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of, that is, the raising of the general price level, of
5484 course, but it has relatively to do, I should say, with the differentiation in price as between different towns. If my town of Ann Arbor, for instance, is going to put up a bank building, and the neighboring town of Ypsilanti, seven miles away, is not going to put up a bank building, I would not expect to see the price of rigid conduit shoot up in Ann Arbor and decline in Ypsilanti.

Q. In other words, bidding for conduit in one of those places, in your opinion as an economist, should have no effect whatever upon price? That is—

A. Relatively little effect because the supplier can send to one town or to the other alternatively, and as long as that is true the two markets will be kept in line, and, therefore, the fact that is really important is the general demand for conduit in the general area.

Q. Well, now, assume that the manufacturer—assume that the base price is set by those, that is, generally, is set by those who operate mills in or near Pittsburgh, and that the base price that they set as of Pittsburgh is used to determine delivered price quotations for more than half of all of the destinations at which conduit is used in the United States. Assume that the same base price is so used, there is no difference made, but that supply and demand factors in some of these locations, in fact, in particular areas, including a half a dozen towns, are flowing
5485 in opposite directions at exactly the same time. How have they expressed themselves in the naming of the Pittsburgh base price?

Mr. Gilpatric: I don't want to be captious in my objection, but haven't we really gone over this particular ground, the flowing in opposite directions, several times?

Mr. MacIntyre: No. We were talking about a non-base mill up in Philadelphia. Now, I am taking another situation now, Mr. Gilpatric.

Trial Examiner Norwood: I think he is within his rights on cross-examination.

Proceed.

Mr. MacIntyre: Please read the question.

Trial Examiner Norwood: Read it.

(Question read.)

A. I don't know what you mean by "supply conditions flowing in opposite directions" from something else. The main supply condition is the fact that Pittsburgh has—a

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large amount of steel is—or conduit is being priced as of Pittsburgh plus freight. That is the main supply condition, and it isn't running one way and the other from time to time in particular markets. It may be for the whole country supply conditions may be changing.

By Mr. MacIntyre:

Q. Is it impossible for you to assume that a particular area within the Pittsburgh basing territory has a
5486 demand that is increasing while at the same time there is another area within the same basing territory where the demand is declining?

A. Oh, that is very easy. I was speaking of the supply factor a moment ago. As to variations in demand between one local market and another, that is—

Q. That leads you to a variation in the relation between supply and demand as between those two places; doesn't it?

A. If you would consider just the local demand,—

Q. Yes.

A. —and the supply, there would be a difference, yes.

Q. That is what we are doing, yes. There is a difference, then, in the relation of supply and demand?

A. No. You leave out the word "local." I said there would be a difference in the relation of the local demand and supply, yes.

Q. Yes.

A. But the significant—

Q. Well, may I ask a question?

A. All right.

Q. Now, I am assuming that that is the case. How has it expressed itself in the announcement of the Pittsburgh base price by the manufacturers who name that as a price to control the delivered price quotations at all destinations where it does control and within which territory these
5487 differences in supply and demand are taking place?

A. Those factors have entered into the general price level of conduit, and that is to say the Pittsburgh—

Q. Base?

A. —base only and those factors are part of the total situation. They do not specifically, each one by itself, have its direct effect, except as it enters into the composite of demand and of—of demand for the product.

Q. In other words, it is your testimony that the base

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price at Pittsburgh does not reflect supply and demand factors in Philadelphia or in Washington which are peculiar to the one of those and not peculiar to the other; is that correct?

A. Let us take them one at a time. It does not reflect in demand peculiar to those different towns.

Q. No; supply and demand factors peculiar to Philadelphia.

A. I am coming to that in just a minute. I wish to take them up separately.

Does it reflect variations in the demand as between these two towns? I would not think so, except as those conditions make part of the total demand situation. The supply conditions are different in these two towns in that they are differently located relative to the Pittsburgh mill. If, however, there is no other mill quoting a price low enough so that, when added to freight, it gives a price in Philadelphia and Washington lower than Pittsburgh
5488 plus freight to Philadelphia or Washington, then, under those circumstances, I would say that the peculiar supply and demand conditions at those towns would not specifically affect the Pittsburgh base price either. They do enter into the total picture of supply, of course, but I understand you are interested in the specific effects—

Q. That is true.

A. —of local supplies.

Q. In other words, they do not in themselves affect and express themselves in the Pittsburgh base price?

A. Unless one of those supply conditions would be that another mill, perhaps located in the East, were quoting a price low enough so that, when added to freight, it would give a delivered price less than Pittsburgh plus freight to that point. Then you would have a new supply condition which would have a bearing, possibly, upon the Pittsburgh price, although that is problematical as to whether it would.

Q. Then, if you leave out this last assumption which you made, then what is the answer to my last question?

A. I have answered that, I think.

Mr. MacIntyre: Well, please read the question. I don't think he has.

(Record read.)

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By Mr. MacIntyre:

Q. In other words, that assumption that unless
5489 they do something you would have a situation. What is the answer?

A. I think in the early part of that answer you have the answer to that question.

Q. All right, if you think it is answered we will leave it. Isn't it a fact that freight absorption is not a matter of making differences in freight but it is a matter of making differences otherwise?

A. As I said this morning, freight absorption, as I view it, is really a price concession, and it is not, strictly, speaking, to be regarded as a concession in freight. It is a sort of misnomer, I agree, if that is what you are getting at.

Trial Examiner Norwood: It is measured by the differences in freight?

The Witness: Yes, and it is very likely the difference in freight that gives rise to the competition concession. It is a fine point, and perhaps a theoretical one.

By Mr. MacIntyre:

Q. You have freight absorption in shipments to two different locations when the freight is exactly the same, when they pay in one and not in the other; isn't that correct?

A. Oh, yes.

Q. So there is no difference in freight involved there, is there, that leads to freight absorption?

A. Well, now, I am finding myself in the position of defending the popular use of the term "freight ab-
5490 sorption," and I have just explained that, strictly speaking, it is a misnomer. But the reason I think it is called freight absorption is that you make a price concession when a manufacturer is at a freight disadvantage in selling to a particular market.

Now, it is perfectly apparent that that disadvantage does not arise out of the fact that the freight is high, but rather it arises out of the fact that it is higher than the freight that some other mill has to pay in order to get into that same market. It is the relative freights of different manufacturers getting into a market.

Q. Therefore, freight absorption is not a matter of making differences in freight, but a matter of making differences otherwise, isn't it?

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A. I don't know what you mean by "differences otherwise," but I would agree, as I have just said twice—

Q. It is a matter of making differences in mill nets instead of making differences in freight. The manufacturer can't make differences in freight, can he?

A. That is true.

Q. So he, therefore, makes—in the process of freight absorption he makes differences in mill nets.

A. Well—

Q. Isn't that correct?

A. I would not want to subscribe to that statement in an unqualified way. I would say that it is a matter
5491 of making a price concession in a particular market when it is necessary to do so to meet competition, and the result of that may be to reduce your mill net. But you do not start, I think, with a reduction of the mill net and work out that way, but the mill net is the result of making the price concession.

Q. Suppose that freight absorption takes place by a manufacturer who does not meet prices of someone else, but who makes higher prices than have ever been made before, and he still engages in freight absorption, are those conditions due to a matter of meeting competition then?

A. Well, the matter of making higher prices than have ever been made before seems to me is irrelevant. If you mean making higher prices than other people are making—

Q. At the time, yes; and in doing so he engages in freight absorption. Now, is he meeting competition or engaging in freight absorption to meet competition?

A. I am afraid I don't see the situation you are describing.

If I understand you, you are speaking of a situation in which a manufacturer is charging in a particular delivery point a higher price than any other manufacturer is charging and at the same time is absorbing freight. I don't visualize that situation. I don't quite see what you are getting at.

Q. Is it impossible, Doctor, for you to visualize a situation where a manufacturer or a group of manufacturers at a particular location name a series of base prices
5492 applying at more than one location, and that immediately following that they proceed to make shipments from one location to another, that is, from one bas-

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ing-point territory into another, involving freight absorption on their part? Is that impossible for you to conceive?

A. No. I can see that.

Q. Well, in making such freight absorption, are they meeting competition of someone else, or are they merely adopting freight absorption as a result of prices announced by them?

A. I should say—if I understand the assumption correctly, I should say they are meeting competition.

Q. They are doing what?

A. They are meeting competition.

Q. Whose?

A. Meeting competition of the mills in whose natural market area they are selling.

Q. Well, now, they have announced prices for all of that area, too, Doctor. That was my assumption. For all the basing-point territories they have already announced their prices, and in some of the territories the base price is different from the base price in other territories, which leads them, when they make shipments from one territory to another, to engage in freight absorption. Has that resulted from their meeting competition? If so, how?

A. Well, I should say that in a sense they are
5493 engaging in freight absorption so as to meet competition of the other manufacturers who are following this base price in the second area, regardless of the question of who established that base price. The other manufacturers are charging it.

Q. In other words, if they create the situation, and somebody else meets it, and they in turn meet it, is that your reasoning?

A. That becomes a little bit like the chicken and the egg. But I should say that at any given market you have a situation that other manufacturers are selling at a certain point, determining their prices by reference to some base, and that that price is lower than the price at your own mill, let us say, plus freight, and you therefore have to make a concession from your—a concession in your mill net. Now, who started it, it seems to me, has nothing to do with the question. It is a price concession that must be made if you are going to sell in that market.

Q. Under the system of announced prices; is that correct?

A. I did not refer to any system of announced prices.

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If there is in fact a price out there which is being used by competitors to determine delivered prices in a certain area, and if you have to accept less than your usual mill net in order to sell at those points, then I say that is freight absorption and you are meeting competition.

Q. But, Doctor, you are making assumptions that
5494 have not been made. You are changing the hypothesis when you say he must do that. I am assuming that these people who control the Pittsburgh base price make that as their base price, also make other base prices different from that applying to other territories. Now, are they meeting anybody's competition, or are they making prices everywhere?

A. Precisely the situation I was trying to describe. I should say—

Q. Well, whose competition are they meeting?

A. In what act?

Q. In the naming of these different base prices for different basing territories.

A. In the naming—I never asserted that in the naming of base prices you would have freight absorption. That is another matter.

Q. Well—

A. I say that in fixing—in quoting prices at particular markets relative to that new base price you are then engaging in freight absorption, and you are doing that to meet competition. That is a different thing.

Trial Examiner Norwood: He did not ask you that. You just answer what he asked you.

Read that question and answer that.

He was referring to the person who made the price.

The Witness: Yes.

5495 Trial Examiner Norwood: Read it. Read that previous question, the last one.

(Question read.)

Trial Examiner Norwood: And the circumstances which he named there. He was referring to the people who made the price. Whose competition are they meeting?

The Witness: And then I think I asked "You mean in the act of fixing the new base price?" And he said, "Yes." Am I right?

At least I understood that is what you wanted.

And it is my testimony that in that act of fixing a new base price I would not call that freight absorption. That is a different situation altogether.

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By Mr. MacIntyre:

Q. Suppose they make shipments in accordance with that price that they announced, in which freight absorption is made, whose competition are they meeting?

A. If there are other sellers than the one that we are now considering selling in that territory, and basing their price upon this new base price, then I would say that in the very real sense you are meeting the competition of those other sellers.

Trial Examiner Norwood: Suppose there were not any?

The Witness: If there were no others, obviously you could not be meeting the competition of others.

5496 Trial Examiner Norwood: Would that be freight absorption, then? He is selling into this other territory there to maybe forestall competition and selling at an amount which reduces his mill net below what he gets locally.

The Witness: The term "freight absorption" is usually used to describe a concession made to meet competition. Theoretically, however, I think—and this, I believe, meets Your Honor's point—theoretically, however, it is possible that a manufacturer might depart from his base price plus freight for other reasons. That is, he might feel that that base price plus freight had gotten up so high that, because of the elasticity of demand, it was desirable for him to accept something less than that at a distant point, you see. I say that is a point of theory. I don't know whether in fact any situations of that kind do exist or not. So there you would have freight absorption that was not designed to meet competition, and would not in fact be meeting the competition of anyone.

By Mr. MacIntyre:

Q. Well, again I ask you, isn't such differences as result in a manufacturer's revenues on one shipment as against another in which freight absorption is involved coming from something other than freight rates?

A. Strictly speaking, it is coming from the lower delivered price that someone else is quoting in a particular

5497 market in which you want to sell. In the actual world, however, that lower price is commonly accounted for by lower freight that the competing manufacturer has, and, therefore, commonly the concession is made because of a freight factor.

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Q. Assume that the freight is the same to the two destinations—

A. Yes.

Q. —but there is freight absorption involved.

A. Yes.

Q. Is any differences in his revenue traceable to differences in freight then?

A. Obviously, if the freight is the same, the difference could not be traceable to freight.

Q. The differences, then, would be in the form of mill nets; isn't that correct?

A. The difference might be in the different base price that each mill is using. In other words, the point that is important in any local market is the sum of the base price some seller is quoting plus the freight. But now, since they are not all necessarily quoting the same base price, why, one of them might have an advantage over another, even though the freight element were precisely the same for the two.

Q. And that would express itself by showing up as differences in mill nets?

A. That is true.

5498 Q. That is, freight absorption would be in that form. It would not be a matter of differences in freight charges; is that correct?

A. From the point of view of the mill coming in to sell in this territory and has to make a concession, as I have said several times the important thing is that someone is offering a lower price there. Now, what that reason is is not so important. One reason might be that they have a freight advantage. Another reason is they are charging a lower price to start with.

Q. But, whatever the reason is, that concession has expressed itself in a low mill net for the concern who is engaged in the freight absorption; isn't that correct?

A. It is likely—it will result in a lower mill net.

Q. But it does not result in any difference of freight rates that that man has paid.

A. That is true.

Q. In what industries have you observed the operation of basing-point methods in pricing?

A. Oh, in the cement industry, in this industry to some extent.

Q. In what?

A. In this industry.

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Q. The rigid steel conduit industry?

A. Yes.

5499 In the sugar industry.

Q. That is, in the industry which is made up of those people who are members of the Sugar Institute?

A. I don't know whether they are members of the Sugar Institute or not. The refined sugar industry—

Q. Yes, the refined sugar industry.

A. —operates on basing-point methods.

Q. Can you name any other?

A. Well, no others in which I know the details very well. I understand there are others.

Q. Are you prepared—

A. Maple flooring, some of the lumber lines, and so on, which I have read about in a general way, but I have not made a detailed study of.

Q. You have observed the use of the basing-point system, then, in the lumber industry, maple flooring, hardwood lumbers, up in Michigan and Wisconsin; is that correct?

A. When I say "observed," I mean I have read of them, as economists generally do, in the literature of the subject of economics.

Q. Any other industries using the basing-point method you have observed and have become acquainted with its method of operation?

A. Not so that I could answer questions in detail about it.

I understand that it is used in salt, and I know 5500 something about the plan, but just in a general way.

Q. That is, salt producers, you know that they have used it and you observed their use of it.

Any other industry?

A. I think that about covers it.

Q. Have you made any observation—

A. I might try to recall something I had read in many years past, but that substantially covers them.

Q. Are you prepared to say that you have examined those industries so that you know that no collusion or agreements were involved in either the adoption or maintenance of the basing-point methods in those industries?

A. Evidently, as an economist, I am not in a position to know whether there is collusion in the industry or not. I am not a detective.

Q. How could you state, then, that the basing-point

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method was adopted, or could be adopted and maintained in the rigid steel conduit industry in the absence of collusion or agreements?

A. In the first place, I did not say that it was adopted that way.

Q. You said it could.

A. I said it could be adopted that way.

Q. Well, how are you in a position to say that it could be adopted and maintained in the rigid steel conduit
5501 industry in the absence of collusion or agreements?

A. I said that because of the basic conditions which, when used with economic reasoning, would lead me to the conclusion that that would be a natural development of competitive forces in that industry.

Q. And that conclusion is based upon observations you made as to these other industries which you have named which use the basing-point system; is that correct?

A. No. That conclusion is based upon—

Q. Well, what is it based upon?

A. I am coming to that.

That conclusion is based upon some 30 years of study of economics, general economic principles, and the observation of the way business men do behave under competitive conditions.

Q. But you have observed these business men behaving through their use of the basing-point system in no industries other than those you named; is that correct?

A. I am not relying on my observations of the development of the basing-point system in the answer to this question; I am relying upon the general application of economic principles and reasoning to a set of assumed facts.

Q. And is there anything in any economic theory which states any economic principle to the effect that a group of business men, that is, manufacturers of a homoge-
5502 neous article, will use a basing-point system in the manner in which basing-point systems have been used in these industries which you have just mentioned?

A. You are asking whether there is an economic principle that—

Q. That states that business men will use a basing-point system and will behave in their use of it in the manner in which the men have behaved in these industries you have just named as ones using basing-point systems.

A. I know of no economic principle that is so involved as all of that, and that will tell you—I beg your pardon.

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I did not mean a reflection on your question, but I meant so involved as that whole situation that you set up. Principles deal with elementary things, and you have to bring these principles together in order to draw an economic conclusion. When you ask is there a principle that explains this and this and this and this, why, no, not that I know of.

Trial Examiner Norwood: Is there a combination of principles?

The Witness: Yes, I think so. I think a combination of recognized economic principles would lead—might well lead economists to that conclusion, and do lead a number of economists to that conclusion.

By Mr. MacIntyre:

Q. Well, if all businessmen in manufacturing in-
5503 dustries were using basing-point systems, and had adopted them by way of collusion and agreement, and maintained them as a result of collusion and agreement, and had done so for as much as a hundred years, and you had studied the situation and did not know about the collusion or agreement, would you conclude that, since that all of them are doing it, would be normal for them to do so, that is, to maintain the systems?

A. I am afraid I can't answer that question. It involves an assumption that something has been going on for a hundred years and that I have had a chance to observe it and that I did not know that that was going on, and other contradictory matters.

Q. Well, let us cut the period down. Assume that for a period of 50 years that a group of industries have been using the basing-point system; that you do not know as to whether or not that they colluded or entered into agreements concerning the adoption of the system or the maintenance of it, but you just saw the operation of it, or at least you have been in a position of looking back over the history of the operation of it without being able to go into the question or the evidence as to whether or not agreements or collusion was involved in the operation. Would you consider that you are in a position then to properly conclude that those industries did not involve collusion or agreement?

A. I never have concluded that they did not—that
5504 any industry did not. I simply concluded that it was not necessary to draw the inference of collusion, and

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I withdraw that inference of collusion—I mean, I would draw that conclusion that you could not infer collusion from the mere fact that basing-point methods had been used in an industry or in half a dozen industries for a period of 50 years. I think my conclusion would still be that—especially for industries that have these characteristics that I mentioned in my testimony—that industries having those characteristics, if they had maintained a basing-point method over a number of years, I would not think that you could properly conclude that there must have been collusion or the absence of competition.

Q. Could you properly conclude that they could not have come into existence as a result of collusion or agreement?

A. Could I properly conclude that they could not have come into existence?

Q. Yes.

A. No. No.

Q. That is, without knowing the facts.

A. No. It is possible to have collusion and agreement under any kind of a basing system that you could name.

Trial Examiner Norwood: Well, in your previous testimony you referred to the fact whether or not it was a necessary conclusion.

I think he used that language—necessary inference, 5505 rather.

The Witness: I assume we are not justified in drawing an inference unless it is necessary.

By Mr. MacIntyre:

Q. Have you made any observations of the basing-point methods used in the lime industry, lime and stone industries?

A. No, not specifically.

Q. Well, generally.

A. I know that there are such methods, and I have read a bit about the general plan, but I couldn't—

Q. You never inquired into the facts sufficient to know whether collusion or agreement was involved?

A. No.

Q. Have you made any inquiries into the cast iron soil pipe industry for the purpose of determining whether or not collusion or agreement was involved in the adoption of a basing-point system in that industry?

A. No.

Q. Have you made any inquiry into the water works,

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valve and hydrant group, valve and fittings manufacturers, for the purpose of determining whether or not zone systems were adopted by agreement or collusion?

A. No, I have not. It is a new one to me that they are using the zoning system.

Q. Have you made any inquiries into the facts
5506 concerning the adoption and use of basing-point systems in the steel industry for the purpose of determining whether or not collusion or agreement was involved in the adoption of the basing-point system in the steel industry, or any part of it?

A. Oh, I have read a considerable amount about the steel industry. I would not say that I was able to draw a conclusion from that as to whether there was collusion or not.

Q. In your lectures to your classes in the business school of the University of Michigan, do you lecture to your students about the use of basing-point systems?

A. Yes.

Q. Do you tell them whether or not in your opinion that they are adopted and used through agreements or collusion?

The Witness: Should I answer that?

Trial Examiner Norwood: I think so.

Q. This is merely going to attitudes that you have expressed. I want to know that they are, Doctor.

A. I naturally can go further in my class than I would feel justified in going in this place.

Q. I am asking you to answer the question that is pending.

A. You are asking me what I would say in my classes and what I do—

Q. I am asking you what you have said on that point.

A. What I have said on that point.

Q. Without giving explanations. I want to know
5507 what you have said.

Mr. Gilpatric: I object to the question, Your Honor. I think it is immaterial what he told his class.

Trial Examiner Norwood: Objection overruled.

Mr. MacIntyre: I wantto know whether he has told his classes whether it involves collusion or does not involve collusion.

A. I don't think that I have expressed—well, I am quite sure of it. I would not express an opinion on that point in the class. I would point out to them that the economic forces

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that are involved in a number of these industries where basing-point methods are used are such as would naturally lead to the development of the basing-point method. I thereby have left the implication that I believed that that is the way they did arise. But I would not be able to say categorically that there had not been collusion, and therefore I have not made such a statement to my class.

By Mr. MacIntyre:

Q. Have you concluded that there was not collusion or agreement in these industries?

A. In my opinion as an economist?

Q. Yes.

A. I do not think that as an economist I can draw a conclusion that there was never collusion or conspiracy used in industries which were using the basing-point method.

5508 Q. I am asking you whether or not you have drawn any conclusions in that direction.

A. No, I have not drawn a conclusion that I would—concerning which I would feel sufficiently positive to make the statement that the statement is definitely true or it is not true.

Q. You have not developed any thought, then, from anything you have studied as to whether or not there is collusion or agreement in these basing-point industries where you have made observations?

A. Yes, I have.

Mr. Bozeman: If Your Honor please, I wish to object to the question, on the ground that it seems to me it has been answered at least a half dozen times.

Trial Examiner Norwood: Objection overruled.

The Witness: I could answer that question if it is permitted in this court to answer it.

Trial Examiner Norwood: Answer.

A. From the studies that I have made of certain basing-point methods it is my opinion that, while there may have been agreements here and there on minor points, that the existence of a basing-point method in a large industry throughout the country over a considerable period of time cannot rest primarily upon agreements.

I draw that conclusion partly from the observation of the difficulties of getting business men to adhere to

5509 particular agreements when they are purely arbitrary, as was well illustrated under the N.R.A. But that is my opinion as a general observer. I would not say

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that economic reasoning could lead one to that conclusion in such a way that I would want to appear here as a professional witness and say that, drawing upon economic science, that conclusion could be positively asserted. But you asked for my own personal opinion, and I have given it.

By Mr. MacIntyre:

Q. Yes. And that is based on your observations that you have made of the sugar refining industry, the cement industry, two industries using the basing-point method?

A. Particularly the cement industry. But I would say that the reason that I have given for the conclusion would lead it to apply to any situation where you have a considerable number of producers operating over a very large area, with ups and downs in business conditions, and over a considerable period, I think it would apply to situations of that kind generally.

Q. And that opinion is based upon the observations that you have made of those industries without examining documentary evidence which was available to you?

A. That is right.

Q. And which could be looked to as to whether collusion or agreements had been used?

A. Note that I said it was not in my opinion out of
5510 the realm of possibility. There may have been agreements here and there. But I do not believe that a method of marketing of that kind, existing over a long period of time, in a country as large as this is, could continue just on the basis, or primarily on the basis of arbitrary agreements.

Q. And you expressed that opinion without examining the documentary evidence which would bear upon that question; is that correct?

Mr. Robison: Now, Mr. Examiner, it was counsel for the Commission who deliberately brought out this opinion.

Mr. MacIntyre: Can't I find out what it is based on?

Mr. Robison: Will you let me finish?

Trial Examiner Norwood: Let him finish.

Mr. Robison: And now he is trying to attack the opinion which he himself brought out and upon which he made this witness his own witness. This witness had not gone into that question on direct examination.

I object to his pursuing the matter further with a view of trying to break down the opinion that he himself has brought out.

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Trial Examiner Norwood: He is not doing that. He just wants to see the bases. I think he may do that.

Objection overruled.

Answer the question.

5511 Mr. MacIntyre: Please read the question.

(Question read.)

Mr. Bozeman: If Your Honor please, I wish to object also on the ground that the witness has stated several times here the extent to which he has investigated specific instances of the use of the basing-point system, and, secondly, the extent to which he has made a theoretical study of the matter, and it is really just rehashing what has been gone into.

Trial Examiner Norwood: Well, he may give us any further explanation he thinks is necessary.

Objection overruled.

A. Yes, I have arrived at that opinion—

By Mr. MacIntyre:

Q. Without examining documentary evidence bearing upon the question, isn't that correct, in the form of communications between the people who participated in the industry?

Trial Examiner Norwood: Let him answer.

A. I have seen some evidence presented of that kind, but not much, and I have not made a thorough investigation of that kind of thing. I readily admit it would not—still would not change my opinion that if a method of this kind existed over a considerable period of time, and over a large market, there must be natural and basic economic factors there leading to the existence of such a plan. Now,

5512 those factors might have been supplemented by agreements, too, but you see why I would consider that for me to run down letters and telegrams and what not would be rather irrelevant to the conclusion that I have reached.

By Mr. MacIntyre:

Q. And you have stated the opinion here as an economist in this case on direct examination that the situation put forth to you in the hypothetical question A that that situation is consistent with competition—

A. Yes.

Q. —and was expressive of competition. I think you used that term. Do you recall?

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A. I do not recall that. If I did say that, I did not mean to imply that it positively had come about as the result of competitive forces. On that point I would consider, as a professional economic witness, that I would not be entitled to express an opinion.

Q. And you have expressed an opinion on direct examination that the use of this basing-point method in the rigid steel conduit industry is consistent with competition even though there might have been collusion or agreements in the industry concerning its adoption and use; is that correct?

Mr. Robison: I object. The witness has not made any such statement.

Trial Examiner Norwood: Well, let him say
5513 whether he did or not.

Objection overruled.

Is that the statement you made, Doctor?

A. I have not volunteered any statements as to what I—as to my judgment as to whether there had been agreements or not. I have simply said that this method is—the development of this method would be entirely consistent with the assumption of competition.

By Mr. MacIntyre:

Q. And do you mean to say by that that it would still be consistent with competition even though agreements or collusion were involved in the adoption and the use of it?

Mr. Gilpatric: I object to that question. It is just—

Trial Examiner Norwood: Objection overruled. Let him answer that.

That is a condition of assumption, Doctor.

The Witness: It sounds to me like an assumption; can't I assume that it could have developed from competition if I know that it did not develop from competition. I find it difficult to reconcile those two.

Mr. MacIntyre: Well, please read my question and see what his answer is to the question.

Trial Examiner Norwood: Read the question.

(Question read.)

5514 A. Well, that gets to almost a hair splitting sort of question, but I think this is a fair answer to it, that even though I should be shown that in some particular industry there had been agreements which implemented the plan that it would not—that would not change my conclu-

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sion that the existence of that plan was consistent with competition; that is to say, it might have developed under competition, it might have developed the other way.

By Mr. MacIntyre:

Q. In other words, if you were showing evidence that the basing-point system in the rigid steel conduit industry was adopted and carried on by people who entered into collusion and agreements concerning its adoption and its maintenance, you would still that their adoption and use of it was consistent with competition; is that correct?

A. Could have come about as a result of competition, yes.

Q. I am asking you if you would still say that it would be consistent with competition.

A. Yes, I think one would say that it was consistent with competition, that is, consistent with an assumption of competition, which means to my mind could come about as a result of competition. For you to show me that in a particular industry it has in fact come about by another method would not dissuade me that it might very well and normally have come about from still another method.

5516 Recess till 10 o'clock tomorrow morning in Room 532.

(Whereupon, at 4:25 o'clock p. m., February 17, 1942, the hearing in the above-entitled matter was adjourned.)

5518 Proceedings.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is now reconvened in Room 532, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., Eastern War Time, February 18, 1942.

Please note the appearances.

Dr. Griffin will resume the stand for further cross-examination.

CLARE E. GRIFFIN resumed the stand and testified further as follows:

Cross-Examination by Mr. MacIntyre (Continued).

Q. Dr. Griffin, at page 5353 of the record you commented upon the use of the term "perfect competition" and to the situation which you consider it should be used to apply.

Would you say that the term "perfect competition" is any more of an abstraction than the term "perfect monopoly"?

Mr. Gilpatric: I object to the question, Mr. Examiner, for the reason that Dr. Griffin did not use in his testimony the term "perfect competition." The portion of the record

5519 to which Mr. MacIntyre refers does not contain those two words in juxtaposition, and I do not think you will find in any of his testimony that phraseology used by the Doctor.

Trial Examiner Norwood: Well, he testified concerning competition.

Mr. Gilpatric: Not perfect competition.

Trial Examiner Norwood: Yes, but he testified concerning competition. He may find out whether it is perfect or imperfect, just how he used the term, almost any way he thinks it is necessary to test him.

Mr. Gilpatric: I just want to make it clear that that particular phrase was not used on direct examination.

Trial Examiner Norwood: Yes.

Objection overruled.

Is there a term like that used in economics?

The Witness: Oh, yes, there is such a term.

Mr. MacIntyre: Will you please read the question.
(Question read.)
A. Well, to compare degrees of abstractions, I think—

By Mr. MacIntyre:

Q. Can't you answer the question and then explain your answer?

Trial Examiner Norwood: He is asking you. Go ahead.

A. I think in some ways it is more of an abstraction, if one can compare degrees of abstractness.

5520 By Mr. MacIntyre:

Q. Isn't it true, Dr. Griffin, that absolute monopoly exists, if at all, as a rarity?

Mr. Gilpatric: I must object again because the subject of monopoly was not brought up on direct examination.

Mr. MacIntyre: No. The Respondents had tried to stay away from the term "monopoly." They want to use the term "competition."

Trial Examiner Norwood: Well, I think he has a perfect right to test this witness' knowledge in the field of economics.

Overruled.

A. Yes, I agree that perfect or absolute monopoly is a rarity.

By Mr. MacIntyre:

Q. Can you cite to us any instance of absolute monopoly that has come to you in your experience and studies?

A. Oh, the United States Post Office, I suppose, is an example.

Q. I am talking about in the matter of manufacturing and selling merchandise, Doctor.

A. Manufacturing and selling service, which is merchandise.

Q. Well, let us use the word "commodities," then, manufacturing and selling commodities. Do you know of any absolute monopoly?

5521 A. We have certainly close approximations to it in the case of various public utilities, or street car lines that have a franchise to operate in the community,—the only one that can operate in the community.

Of course, it depends upon just how strictly you define "absolute"—"perfect monopoly." If we mean by "perfect monopoly" that it is—

Q. Absolute.

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A. Well, absolute monopoly—that it is a seller who is selling a product for which there are no possible alternatives, then it would be difficult to find absolute monopoly, because in an economic sense most goods are alternatives for others. They are alternatives in the sense that people buy either one or another.

But I agree with your general proposition that absolute monopolies are rare.

I answered the previous question, however, in saying that I think there is rather more of the elements of abstraction in the concept of perfect competition, because it seems to me there are more assumptions involved there than there are in the case of perfect monopoly. But if you look at the actual world, you are perfectly right in saying that there are certainly very, very few cases of absolute monopoly, and certainly very few cases—I should say even fewer cases of the sort of thing that economists have in mind
5522 in the concept of perfect competition. In fact, as to the latter I would say I do not know of any.

Q. Well, do you know of any cases of absolute monopoly in the manufacturing and selling of commodities?

I stress the word "absolute" there, Doctor.

A. I can't be sure, but the diamond syndicate is sometimes cited as a case of complete monopoly.

Q. No substitution possible there for—

A. Oh, of course, people can buy pearls instead of diamonds. You can buy bread instead of diamonds, if you wish. But in the sense of being a sole seller of diamonds, I am informed that that is the case. I do not suppose I have special inside knowledge about the Diamond Syndicate. That is just common report.

Q. Does economic theory recognize that a man does not have absolute monopoly in supplying the wants of buyers and consumers as long as substitution can be had which will supply those wants?

A. Oh, yes, of course it recognizes that.

Q. And can you cite any absolute monopoly where the problem of substitution need not be considered by the seller of a commodity?

A. No, I would not be able to cite any case where it need not be considered at all. I think my first illustration comes fairly close to it, in the Post Office; but it is true
5523 that people can telephone instead of write letters.

Trial Examiner Norwood: When you are discussing

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this, "absolute" would mean the same as "perfect," would it?

The Witness: I would think they mean the same thing, yes, when applied to monopoly. Yes.

By Mr. MacIntyre:

Q. Does economic theory recognize the use of the term "imperfect monopoly" in applying it to describe a situation, a monopolistic situation?

A. I don't recall the use of the term "imperfect monopoly," but I suppose any economist could conceive of degrees of control.

Q. Is there any part of the body of economic theory that recognizes and uses and accepts that as a term, standard term, used to describe any condition in trade of commodities?

Mr. Robison: Well, I submit the witness has answered that question, Mr. Examiner. I don't see why we should take time to have it answered a second time.

Mr. MacIntyre: He has not answered that one.

Mr. Robison: He has.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Robison: The answer to the previous question—

Trial Examiner Norwood: What term were you referring to there?

5524 Mr. MacIntyre: The term "imperfect monopoly," which was included in a preceding question.

Mr. Robison: In the answer to the previous question he said he did not know of it being used.

Trial Examiner Norwood: Well, that is just not clear. He may answer that.

A. I will answer it again the same way. I do not know of any writer who has used the term "imperfect monopoly." I won't say there isn't any, but I don't recall any at the moment. But the concept is perfectly simple, of course, and I would just say that I don't know of anyone who has used that term in a formal way.

By Mr. MacIntyre:

Q. You do know economists who have used the term "imperfect competition" to describe conditions which do not fit in with the term "perfect competition"; is that correct?

A. Yes, I do, but putting—

Q. In fact, you—
A. —those two in juxtaposition implies—
Q. Well, now—
Mr. Robison: Well, now—
Trial Examiner Norwood: Wait a minute.
The Witness: May I finish?
Trial Examiner Norwood: Yes. Go ahead.
A. (Continuing.) —implies that the term "imper-
5525 fect competition" indicates something relative to perfect competition as imperfect monopoly would relative to perfect monopoly.

Now, my understanding of the term "imperfect competition" is that it is just a different kind of a competitive situation. It doesn't imply that there is less of it or that it is less keen. It is not a matter of degree. It is almost—it is a difference in kind. I should be glad to explain it further if you care for it, but I want to make that point clear.

Q. You have used the term yourself to describe a condition existing in an industry which uses the basing-point method; is that correct?

A. I have used the term to describe the conditions existing in practically all manufacturing industries. It is true it also applies to basing-point industries.

Q. Well, you have used it to describe the condition existing in an industry using the basing-point system; is that correct?

A. That is correct, along with all other manufacturing industries, virtually all other manufacturing industries.

Trial Examiner Norwood: He did not ask you about that. You have told him that twice.

The Witness: Yes; I have answered the question twice.

Trial Examiner Norwood: Just answer his question.

5526 By Mr. MacIntyre:

Q. The answer to that question is "yes"; is that correct?

A. I think I have answered the question twice.

Q. Well, you tried to answer it with another answer. I want to know what your answer is as an answer to that question, Doctor.

Mr. Robison: Now, I think we should understand what the question means, Mr. Examiner. In view of the pressure that Mr. MacIntyre is attempting to exert, I think we should have it understood whether he means to ask the

witness whether he has specifically used the term with reference to the industry, particular sort of industry, referred to in the question.

Trial Examiner Norwood: I shall ask the witness to make a direct answer to that last question without any explanations.

A. Yes.

By Mr. MacIntyre:

Q. And is it your opinion as an economist that the term "imperfect competition" can properly be applied to describe the conditions which were put to you in the hypothetical question A by Mr. Robison?

A. Yes.

Q. Is it your testimony that the term "imperfect competition" is improperly applied to any industry in which
5527 there is collusion or agreement?

A. Yes; I suppose it would be improperly applied to industries of that kind, although that is not what is implied by the term "imperfect competition."

Q. In other words, it is your testimony that it would be improper to say that the term "imperfect competition," as used by you—strike that question.

Trial Examiner Norwood: Delete it.

By Mr. MacIntyre:

Q. In other words, it is your testimony that it would be improper for anyone to use the term "imperfect competition," as it has been used by you to describe a condition, and exclude from that condition—that is, necessarily exclude from that condition—collusion or agreements?

Mr. Robison: Well, Mr. Examiner, it seems to me the question is in the nature of a catch question. We should know whether, when he says "anybody," he is confining that term to economists or whether he includes the man on the street as to whether it would be, in the view of the witness, improper to use the term "imperfect competition" with reference to a certain situation.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I will ask you to answer that as an economist.

5528 A. If I understand the question correctly, I would say that it would not be improper to use the term "imperfect competition" to situations in which the possi-

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bility of collusion was excluded. That is to say, that imperfect competition—in order to say that an industry is characterized by imperfect competition, it is not necessary to assume that there is any collusion in the industry. I assumed that point had been made clear many times.

Q. Well, is it necessary to assume that there is no collusion or agreement in applying the term to describe a condition?

A. I don't think you have to assume anything about the—

Trial Examiner Norwood: Well, now, just answer with respect to one thing. Is that necessary or not?

The Witness: Read the question again, please.

(Question read.)

Trial Examiner Norwood: Is that an essential?

The Witness: You mean the term "imperfect competition" you are talking about?

By Mr. MacIntyre:

Q. Yes.

A. No, it is not necessary to assume either the presence or the absence of collusion in order to apply the term "imperfect competition."

Q. In other words, you assume that it is proper to apply that term to describe a condition without ex-
5529 cluding collusion or agreement from the condition?

A. That is right.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Is it your testimony that it is not logical for manufacturers and sellers of a homogeneous or standardized manufactured product to act so as to net to each one in his group the greatest possible profits?

A. No.

Q. Now, taking the word "normal" as you have used it in your testimony here, would you say that, as you have used it, it should mean that it is normal for all members of a group of manufacturers and sellers of a homogeneous or standardized commodity to so act as to result in the greatest possible profits to each one in the group?

A. As I have used the word "normal"—and I understand that is what you are inquiring about, what I mean

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by the term "normal"—I meant the normal individual attitudes and actions of business men following their own individual self-interest and following them individually.

Mr. MacIntyre: Now, if Your Honor please, that is a general rather than the particular answer that I called for in the question. I ask that the witness be instructed to answer the question.

5530

May we have it read?

Trial Examiner Norwood: Read the question.

(Question read.)

A. No. My use of the word "normal" did not extend that far, did not extend to possibilities of the group acting in—of the members of the group acting in concert. By "normal" I meant the normal individual actions.

Trial Examiner Norwood: Independent reactions?

The Witness: Yes, sir.

By Mr. MacIntyre:

Q. But would you say that it would be normal, in the sense in which you have used it here, for each one of a group such as I have described to so act as to result in the greatest possible profits for each one of the group?

A. I think it would be normal for each one of the group to so act as to advance his own individual interest.

Q. And those others in the group, if in doing so, he advanced his own interest; is that correct?

A. I don't understand that question, sir.

Q. Well, would you say that it would be normal for him to act in a particular way to advance his own interest if in doing so he advanced the interest of others in his group?

A. I am not quite clear whether you are asking what meanings might possibly be attached to the word "normal" or whether you are asking, as I understood you were, what meaning I have attached to the word "normal" when I have used it in my testimony.

5531

Q. Well, answer it both ways, Doctor, and tell us which way you are answering it each time you are answering it.

A. I can tell you, as I think I have previously, that when I have used the word "normal" here I have meant the normal individual actions and attitudes of individual business men acting separately.

Q. But has that precluded the action on the part of that individual which advanced the—advances the interests of all in his group when it also advances his individual interest?

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A. No. I suppose no business man acting individually in his own individual self-interest is particularly concerned or worried if some other business man incidentally benefits also. His concern is with his own benefit. The other would be incidental, and it would not preclude the possibility that someone else might gain an advantage, too.

Q. Now, take the situation where, acting in concert with others in the group when he and they act in a particular way, they advance the individual self-interest of each. Is it normal for him to act with them in such concerted manner to further such ends?

A. In short, you are asking if it is normal for people to act in concert. Is that—

5532 Q. No.

Mr. MacIntyre: Please read the question.

The Witness: All right. Read the question.

(Question read.)

Mr. MacIntyre: So as to further such ends. So as to further such ends.

A. I suppose you might say it was normal although, frankly, I am not just clear what we mean by "normal" in some of these senses in which we are using the term. As I have used the term, I have been referring to—as I have explained before—referring to individual business men functioning individually.

Trial Examiner Norwood: Well, as you used the word "normal" would it include any sort of price fixing or agreement or collusion?

The Witness: No, not as I have used the word "normal," decidedly not.

By Mr. MacIntyre:

Q. But you have used the word normal in conjunction with the statement that it is normal for a man to act in his own individual self-interest. I am asking you now whether that in your use of it in that sense you would preclude the action of one in concert with others when he and they know that in acting in a particular way they advance the individual self-interest of all?

A. I do not think you could apply the word "nor-

5533 mal" to that situation. You cannot carry the thought that I expressed a while ago too far when you say that it is normal for people to seek their own individual self-interest. That seeking of one's individual self-interest would not be regarded as normally leading a person to pick

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another man's pocket, for example, or to engage in a hold-up, nor to do various other things that are unlawful. I am assuming that by "normal" we mean normal law-abiding individuals who are proceeding in the regular, normal ways of business.

Q. In other words, you would consider that it is not normal to expect a pickpocket to pick pockets; is that correct?

A. That is correct, but it is not normal to expect that they would be pickpockets until they are proven to be pick-pockets, and I don't assume that the general run of human beings are pickpockets.

Trial Examiner Norwood: In other words, picking pockets is not a normal behavior; is that right?

The Witness: No, sir. Very true.

By Mr. MacIntyre:

Q. Does a monopolist act in his own individual self-interest normally?

A. Certainly.

Q. And would a group of sellers who constitute a monopoly and operate a monopoly be acting in their individual self-interest in furthering the interest of the monopoly?

5534 A. If you have a group of sellers who constitute a monopoly, they would presumably act in their own individual self-interest in—

Q. In promoting the interest of the monopoly.

A. —in promoting the interest of the monopoly, of course.

Q. Now, you have told us about your observations and your experience and your studies dealing with delivered price methods, including basing-point industries, freight allowed methods, freight equalization methods, and so on.

Will you please name the works in which you have made studies dealing with those methods in your researches?

A. I do not have a list of them at hand, and they have been—these readings have extended over a period of years, but I will try to recall as best I can—

Q. Well, if it is too much to name all over the period of years, let me ask you this question:

Have you made reference to any since you were employed to give testimony in this case for the Respondents?

A. I do not think I have read any new studies. I have reviewed some that I had read before.

Q. And one of those was a writing of Vernon Mund; is that correct?

A. No, I have not reviewed that since I came in contact with the counsel in this case.

Q. When was the last time that you read that

5535 work by Vernon Mund?

A. Well, that would have been last spring. That was an article in the Journal of Economics.

Q. Have you relied upon any concepts of competition expressed by him in that article in the giving of your testimony here?

A. I do not recall that he deals very much with concepts of competition in the article. As I recall it, it is a factual article describing different methods of pricing that are used in various different industries.

Q. Does his statement of the facts contained therein agree with your understanding of the operations of the basing-point systems as you have observed them?

Mr. Robison: I object to it. The question has reference to something that is not in evidence. It is too indefinite. Nobody can know what it means.

Mr. MacIntyre: Can't we find out whether this witness, after reading these various things in carrying on his researches about which he told us so much on direct examination, is contradictory or in accord with the testimony that he is giving after he has made his researches?

Trial Examiner Norwood: Well, did he mention this as one of the bases for his opinion?

Mr. MacIntyre: He has stated that it is a part of the body of his research.

5536 Trial Examiner Norwood: What is?

Mr. MacIntyre: This particular item that I am now asking him about.

Mr. Robison: He stated nothing of the sort, Mr. Examiner. He said that he had not since he came in contact with counsel in this case reviewed the article. He said that he did read the article when it came out in the Quarterly Review of the Journal—

The Witness: Journal of Economics.

Mr. Robison: —Journal of Economics last spring.

Trial Examiner Norwood: Well, was that in any way the basis of your testimony here today?

The Witness: No.

Trial Examiner Norwood: —or testimony here in any of these days in which you have testified?

The Witness: No.

Trial Examiner Norwood: Well, I will sustain the objection.

By Mr. MacIntyre:

Q. Where did you get your ideas about in what manner the basing-point system operates in these various industries?

A. That is a pretty large question. I have been studying the basing-point method of pricing a great many years, and I described to you some of the books that dealt with that question, and which I have read.

5537 I have read particularly the two reports of the Federal Trade Commission dealing with the—one entitled Cement Industry, and the other dealing with Price Bases Inquiry.

I have read Professor Fetter's book on Masquerade of Monopoly. I have read various articles by him.

I have read a number of articles of economists about the time that the Steel Case was up in 1924.

I have read the Monograph No. 1 of the T. N. E. C. written under the general supervision of Professor Mason of Harvard.

I read the testimony before the so-called Wheeler Committee in the Senate a few years ago.

I read—but I would not say that I can remember all the details, nor would I be able to testify on it—the Commission's brief in the case of the Old Steel Case, the Pittsburgh Plus Case.

I have read various other articles. In fact, I think I have read all of the articles dealing with the basing-point method that have appeared in the established economic journals in this country.

Q. Is it your testimony that these monographs on the basing-point system in the steel industry which were submitted to T. N. E. C. support you in your views which you have expressed here in your testimony concerning the competitive character of the basing-point system?

5538 Mr. Robison: I object to it. The monographs referred to are not in evidence, and neither could they be admitted in evidence, and a wholesale blanket question of this sort is highly improper.

Trial Examiner Norwood: Now, is your testimony based on any particular ones of these?

The Witness: No, sir. It is based on some twenty-odd years of reading and study about this subject.

Trial Examiner Norwood: Objection sustained.

By Mr. MacIntyre:

Q. Well, all of these sources that you have mentioned are regarded by economists as secondary sources, aren't they, as distinguished from the so-called primary source of investigation, firsthand?

A. Yes, they are secondary sources in that sense. I suppose even an official publication of the Federal Trade Commission, in so far as it is drawing conclusions and expressing conclusions, is a secondary source in the sense in which you are using the word now.

Q. Now, thinking of the investigations which underlie such reports, will you please tell us what investigations of such nature that you have made firsthand into the operation of basing-point systems in these industries?

A. I don't think I could claim to have made firsthand investigation,—that is, statistical quantity and nature 5539 of that kind.

Q. That is, in any one industry that uses the basing-point system; is that correct?

A. That is correct.

Q. Do you recall that in your testimony on direct examination you used the term—that is, in speaking about the sale of a commodity under a basing-point system—the term "natural territory," or "natural market territory" in referring to that territory around the mill that produces?

A. I do not recall that I used the word, but if you say that I did, I will accept it.

Q. Well, you in your thought apply such term to such territory, do you?

A. Well, I suppose in the sense that a person would regard the market right close to him as being one in which he would normally sell, that is, naturally sell, you see, it is a natural market in that sense.

Q. And what territory around any one of these mills in the rigid steel conduit industry as described to you in the hypothetical question A would you consider as the limits of such territory?

A. I did not have a very precise definition of the limits of such a territory in mind in giving my testimony. I was simply referring to that close, nearby territory.

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Q. Well, would it include the territory in which the
5540 mill had a freight advantage over all competitors?

A. Yes, I would think it would include that territory.

Q. You would consider, then, that within such limits the manufacturer with mill located there would have that as natural market territory; is that correct?

A. Yes, I suppose that is right, although in a more measured use of words I would not call it a natural market; but if you want to define it that way, I think no harm is done.

Q. Is it your testimony that it is a part of the body of economic theory, that is, of accepted and generally recognized economic theory, that it is normal for two manufacturers and sellers at a particular location to share their nearby natural market territory with two other manufacturers located at some other point, and that those two at the other point will share their natural market territory with the two manufacturers located at the first point mentioned, and in doing so they will charge identical,—or will quote identical delivered prices in the territory of each, and also accept higher mill net returns from their customers in their natural market territory than they do from customers located in the territory of the other sellers, and do that simultaneously?

Trial Examiner Norwood: Do you want that read, Doctor?

The Witness: It is a pretty long question. If you would read it I would appreciate it.

5541 Trial Examiner Norwood: Read it.

(Question read.)

A. I can't answer all those questions in one. There are several questions involved. You have asked a question as to whether it would be natural for these people to share markets, implying, I assume, that they are voluntarily sharing the market. You are asking a number of other questions.

By Mr. MacIntyre:

Q. Well, that is an assumption of mine, just as Mr. Robison's assumption was set forth in his hypothetical question A.

Trial Examiner Norwood: You assume there that this sharing is the result of the other methods which you have enumerated there.

Mr. MacIntyre: I am assuming that all of them are present without assuming that they are the result of anything; that they are all present in this condition that I have set forth. I am asking him that if they are all present, then does he consider that that is a part of economic theory, accepted and generally recognized economic theory, that they are acting normally.

Trial Examiner Norwood: I think that you can answer that.

A. I center my attention upon the question whether it is natural, or whether there is any economic theory that would tend to explain or justify two manufacturers
5542 in one market area—

Mr. MacIntyre: Now, if Your Honor please, that is not answering the question. I am asking him to state whether or not that there is anything in economic theory that states that it is normal for sellers to so act, and I would like an answer to that question.

Trial Examiner Norwood: Just let him go ahead with his answer.

Mr. MacIntyre: I would not like other assumptions to be placed there.

Mr. Robison: Now, Mr. Examiner, we have before us a question which would occupy I should think at least a page of the record, and it seems to me that the witness is entitled to at least as much space to answer the question.

Mr. MacIntyre: Well, Mr. Robison put in a ten full-page question.

Trial Examiner Norwood: Off the record.

Go ahead.

Can you answer that?

The Witness: Read it once more.

Trial Examiner Norwood: Read it.

(Question read.)

A. Now, as I said yesterday, there is no one economic principle that would cover as involved a situation as this, but I would say that the assumptions that you have
5543 made there are not inconsistent with generally accepted economic principles.

By Mr. MacIntyre:

Q. Well, I again ask you whether or not that the body of economic theory which is generally recognized and accepted states that that is normal for sellers to do that.

A. I think I have answered that question.

Q. Well—

A. Answering it again specifically, yes. Under certain conditions that might exist in an industry, and it would be quite possible to find those assumptions that you have mentioned existing in an industry and be perfectly—and have them result in perfectly normal competitive forces as recognized in general economic principles.

Q. Could that exist in any other condition than one of imperfect competition, which you have talked to us about here.

Mr. Robison: Mr. Examiner, it seems to me that this question is really little short of ridiculous. We have a discussion here about perfect competition and imperfect competition. Obviously this question is intended for no other purpose than to try to draw a red herring across the trail.

I object to it.

Trial Examiner Norwood: Objection overruled.

Mr. MacIntyre: Read the question, please.

(Question read.)

A. If I may, I would like to say in prefacing my
5544 answer that I have not talked very much about imperfect competition, and in answering certain specific questions of yours I did not define what I mean by "imperfect competition."

Mr. MacIntyre: Now, I insist that the witness answer my question, instead of telling me what he has done and what he has not done. The record shows what he has done.

Trial Examiner Norwood: As you understand it, would that be a case of imperfect competition?

The Witness: Yes.

Well, I think, Your Honor, that in answering that question I should be entitled to say what I mean by "imperfect competition."

Trial Examiner Norwood: Well, that can be brought out by your counsel. I simply asked you if that conforms with your understanding of it.

And do you understand that those conditions could exist in any other than imperfect competition?

The Witness: No, I don't think they could, but the—that is enough.

By Mr. MacIntyre:

Q. Now, Professor, assume that the bids and offers of a number of sellers, rigid steel conduit manufacturers, not only tend to but have become absolutely identical and uniform for all at a given point, and that they remain so at a rigid level for a period of from one month to one
5545 year or more, without change.

Is it your testimony that there is any statement in the body of generally recognized and accepted economic theory which states that that is a condition normally prevailing in a fully competitive market, a market of free and perfect competition?

A. Considering the next-to-the-last word that you used in your question, I think one would have to say that these —I think my answer would be "no." Because, then, it is the same answer as the question you asked previously in which you were referring to perfect competition.

Q. Can you cite any part of theories as to the uniformity of price in a market as advanced by economic writers who advanced that theory, in the first instance, which includes in it the condition I have assumed in the preceding question?

A. No, sir; I can't cite any one statement of economic principles that covers that particular situation. There is the well known proposition in economics that prices in a given market, assuming that there are alternative offers being made and that buyers—buyers are informed, must be uniform, also assuming a standardized product. So that part of your assumption is clearly covered by the so-called law of single price.

Now, the other part had to do with the length of time over which these prices remain unchanged. Now, it seems to me that is not related particularly to the identity
5546 of prices at any given moment. That is derived readily from the principle we have just talked about, and the other question is one of stability of price over a period of time; and I think it is generally recognized and expressed by many writers of economics that with manufacturing industries there are certain forces leading to a considerable degree of stability of prices.

So I think that the whole picture you present is quite consistent with recognized economic principles and theories.

Q. Well, is there any expression of an economic princi-

ple in the body of economic theory to the effect that price —that is, bid and asked offers—strike the word "price"—bid and asked offers will not only tend to, but will become absolutely uniform and identically the same for all sellers and remain so for a period of from one month to one year or more?

A. No. As I have said before, the economic principles don't deal with such specific points as that.

Q. Well, does the statement of the principles of the so-called economic law of uniformity of price in a market apply to a situation where bid and asked offers not only tend to, but do become absolutely uniform and remain rigidly so at a particular level for one month or one year or more?

A. As I understand the principle, it doesn't deal with bid and asked offers at all. It simply states that
5547 under the conditions that have been described many times, that is, the standardized or homogeneous product and alternative sources of supply and well informed buyers, that there will be either identical prices or a very powerful tendency toward identical prices.

Trial Examiner Norwood: We will have a five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Go ahead. Proceed.

By Mr. MacIntyre:

Q. Now, Professor, referring again to the situation that I assumed in the last two questions that I put to you, and assuming further that the sellers adhere to that situation, with reference to buyers, what buyers' alternatives are presented?

A. In the particular market the buyer's alternative is that he will not have to pay a higher price from one than from another.

Does that answer your question?

Q. Well, what alternative does he have as a buyer in reaching a decision as to—that is, with reference to price, in reaching a decision as to which of those sellers he will make his purchases from?

A. Well, obviously, if you assume that the price quoted by all of the sellers is the same, then there is no
5548 basis for choice between the sellers, as far as price is concerned. That would be self-evident.

Q. In other words, there is no buyer alternative as between the sellers in making up his decision as to price?

A. Under the assumption you have stated, that would be true.

If I might add a short statement to that, he does have the alternative of buying from one or from the other, and it is that very fact that brings about—

Trial Examiner Norwood: He just asked you as to price.

The Witness: Yes. I am referring to price.

Trial Examiner Norwood: I think that is a complete answer there.

By Mr. MacIntyre:

Q. Now, last Friday you told us what the conditions were, as you saw them, which would be favorable to the use of a basing-point system, and in that connection you gave as, one, the element of few producers widely scattered so that no one of them could choose whether shipment would be made from one location or another to a given destination. Do you recall that?

A. I do not recall the latter part of it, as to one being able to choose whether shipment was to be made from one location or another. I well recall mentioning that one of those factors favoring the existence of a basing-point
5549 method of pricing was relatively few producers, and, second, that they were scattered and variously located relative to markets.

Q. Well, do you say that the fact that a producer can choose as to whether he will make shipment from one plant or another to a given location is a factor which works against the operation of a basing-point system?

A. If that situation were general in the sense that there were one large producer owning several plants and supplying all of the product, then I would say that that would be unfavorable to the existence and development of a basing-point method. But merely to say that there was one out of several of the producers who owned more than one plant would not be a factor that would preclude the possibility of the existence of the basing-point method.

Q. Well, is it one that would work unfavorably against the use of a basing-point method?

A. I think to put it in that way that we would have to combine two thoughts; one, the existence of a number of

plants from which materials could be shipped, and common ownership or control of all of those plants.

Q. Well, assuming that to be the case, does that work unfavorably against the use of the basing-point method by that manufacturer?

A. Yes. If you had a manufacturer who controlled the various producing plants, one manufacturer, that, in
5550 my judgment, would be unfavorable to the development of a basing-point method. I would not say that even then it would preclude the possibility of it, but it would be unfavorable to it.

Q. Now, in that connection you have also mentioned an element involving a degree of fixed costs; you recall that, do you?

A. Yes.

Q. Well, considering that as an element present in basing-point industries, as well as those that do not use the basing-point method, how do you say that the urge for volume in the basing-point industry is satisfied for all plants involved in that industry any more than is done in the industry which does not use the basing-point method?

A. I did not make any such statement as that, but if you ask whether one could make such a statement, I don't think that you could, because I am referring here to the motives that control individual plants. I have not asserted that by the use of freight absorption and intermarket penetration or the basing-point method that the total volume of business to all of the mills of an industry would be increased. I am saying that each individual mill might well try to increase its volume by a practice of this kind. My reasoning implies that each mill owner is regarding the question from his point of view.

5553 Q. Doctor, assume that under a uniform f.o.b. mill system of quoting prices on rigid steel conduit each of the manufacturers is seeking to extend his territory to such limits that they flow in the direction of each other's mill and, in fact, is attempting to extend it to and beyond each other's mill. Is there economic pressure in the form of price competition upon the prices quoted by each?

A. This is in the case of a uniform f.o.b.?

Q. Yes.

A. That is right?

Mr. MacIntyre: May we have the question read so that the witness will know precisely what it is?

Trial Examiner Norwood: Read it.

(Question read.)

A. Yes. The competition is in the effort of each mill to extend its territory at the expense of the other mill and to retain—each one to retain for itself as large a market as possible.

By Mr. MacIntyre:

Q. Assume that under a uniform f.o.b. mill price plan of quoting prices on rigid steel conduit that a demand for rigid steel conduit by virtue of some unusual building construction arises near the location of the plant of manufacturer A, so that it takes not only all of his production—he is running at capacity—but some additional conduit
5554 to supply the demand; assume that he fills the demand, in so far as his productive facilities permit, at the uniform f.o.b. mill price which he had been quoting and which was sufficiently low to keep other manufacturers out of that territory; assume that this additional demand is filled by another manufacturer whose plant is located in adjoining territory, and that that demand is satisfied at a price which is the same as the uniform f.o.b. mill price he had been quoting for all of his customers, and that the only thing that is involved in addition to that in the way of cost to the buyer is the freight from his mill to the location where the conduit is used.

Under those circumstances, how has the use of a uniform f.o.b. mill plan of quoting prices increased cost of conduit to the buyer above what the cost would have been under the basing-point system of quoting?

A. The buyer in the first market to which reference was made and in which territory the local mill had found it impossible to supply the total demand,—that buyer would have to pay under those circumstances the base price, or the mill price, say, of the distant mill plus the freight into that territory on that part of the supply which comes from that mill.

Now, that part of the supply is no different from any other part of the supply. Those units become, to use the economic term, marginal units required to supply this local demand, and they determine the price of the whole
5555 supply, and therefore I should say that the buyer would lose any advantage that he might otherwise have had from being close to the mill. And, furthermore,

the mill, the first mill we referred to, is going to get a higher price for the product that it sells because of the necessity of bringing some of this product in from the distance.

Q. I have assumed that the local mill there has already had its f.o.b. mill price forced down to the lowest possible level by virtue of the fact that the adjacent manufacturers were attempting to encroach upon its territory by extending their territory to and including all of its local territory. That is the first assumption. Now, of course, he at his f.o.b. mill price thus arrived at has supplied the local demand up to the limit of his producing capacity.

How, then, has anyone else, that is, local buyer, paid any more in the way of a cost for conduit that could not be supplied by the local mill under the uniform f.o.b. mill system than would be paid under any other system?

A. I think the significant point is that the one at this local mill does not just go ahead on its old price and produce—

Q. No. I am assuming that it does.

A. —to capacity, and then—

Trial Examiner Norwood: Wait a minute.

Mr. MacIntyre: The Professor wants to change the assumptions. I am assuming that it does go ahead on
5556 the old price.

Trial Examiner Norwood: Can't you answer that on the assumptions he has made?

The Witness: It is an impossible assumption.

Mr. MacIntyre: That it filled all the local demand that it can at the old price.

Trial Examiner Norwood: Now, it is not for you to say whether the assumptions are possible or impossible. If they are not inconsistent with each other, you can answer on those assumptions.

The Witness: May I ask one further question?

Trial Examiner Norwood: Yes.

The Witness: Do you mean that in point of time the local mill first sells out all of its supply, and then unexpectedly a new demand arises that makes it necessary to bring the product in from a distance? Is that the thought you had in mind?

Mr. MacIntyre: Yes.

The Witness: Well, under those circumstances you would during the first phase of this market situation, assuming

that this first mill did not know that that extra demand was going to come in, presumably they would be selling at their old price. Then when this new demand unexpectedly arises, that might come in at a different price.

By Mr. MacIntyre:

5557 Q. But assuming that it is at a low competitive f.o.b. mill price of the manufacturer who ships it in plus the freight from his shipping point to the point of use. Now, has the buyer in that situation paid any more than he would have under some other system, that is, some system other than the uniform f.o.b. mill system, as a cost for his conduit?

A. He has paid more—

Q. How has he?

A. —on the additional supply than he would have paid if this first mill to which we referred was a base mill, or a mill at a basing point.

Q. How do you reason that?

A. Because, if I may assume some figures for illustration, let us assume that the base price is $1 at this place where the first mill is located.

Q. The local mill.

A. And it is also $1 at the distant mill's point of production. Under those circumstances the additional supply needed would flow into this first market at the base price of $1—by definition of the basing-point method.

Q. Yes.

A. Now, under the uniform f.o.b. plan, under these assumptions that you have set up, the additional supply over and above that which could be produced by the first mill would be brought in at a price of $1 plus the cost of

5558 transportation from the distant mill, and that is demonstrably a larger sum than the $1 which would have been charged under the basing-point method.

If you ask then whether that costs more than it would under any other system, I say yes, it would cost more than under the system I have just described.

Q. But this local mill under the uniform f.o.b. mill price I just outlined to you through the quotation of the $1 price has brought the level to the lowest possible price competition can force it, and competition has done likewise to the uniform f.o.b. mill price of the more distant mill, because of each trying to take the territory of the other, and the

local mill cannot, by virtue of limit upon his producing capacity, supply any more demand. What, then, has arisen to cause the uniform f.o.b. mill plan to cost the buyer any more on this additional demand than under the basing-point system?

A. I think substantially I answered that question before, but perhaps there is this additional point introduced, that—

Q. What additional point?

A. —that the base price has been reduced to the lowest possible point by—or that the local mill prices have been introduced—have been reduced to the lowest possible point. When we say that a local mill price has been set at the hypothetical figure of $1, that is the lowest—

Q. That competition has forced it, I am assuming.

5559 A. Yes.

That does not mean that they cannot make some sales at less than that price, and they do make sales under the freight absorption plan at a mill net less than $1 when it is necessary to meet competition.

Q. But does it do that under the basing-point system to his local customers or someone far removed?

A. Obviously he will do it wherever competitive conditions force him to do it.

Q. Yes, but under the basing-point system the competitive forces do not compel him to give his customers at his mill locality any lower price than the basing-point price, do they, plus the freight from the mill? That is the way that the basing-point system operates, isn't it? The freight absorption from some other mill—

Trial Examiner Norwood: Wait a minute. Let him answer some of these questions before you proceed.

The Witness: What is the question, if I might ask?

Trial Examiner Norwood: Which question did you want him to answer?

Mr. MacIntyre: Well, I will have to state a new question. The Doctor is starting to assume various things.

Trial Examiner Norwood: You state one.

By Mr. MacIntyre:

Q. Assume, Doctor, that under the circumstances

5560 that I have outlined to you as to this local demand exceeding the local supply that the freight absorption under the basing-point system by any other mill shipping into that territory would not have resulted in any lower delivered price quotation than would be the equivalent of

the basing-point price of the local mill plus the freight from that mill.

A. Yes. Then what?

Q. Then in what way has the buyer secured any advantage as to cost in purchasing under the basing-point system that he would not have secured under the uniform f.o.b. mill system?

A. My understanding of the situation that you have set up is that this market is close to this one mill, which we have been calling the local mill. Under the basing-point method the total amount of product desired in that market, even though it might temporarily exceed the productive capacity of the local mill, would be supplied at the base price prevailing at that mill, even though some of it came in from a considerable distance, that fact being explained by the fact that the product coming in from a distance is sold on a freight absorption basis; that is, on such a basis as to yield a lower mill net to the producer.

Now, under the uniform f.o.b. plan the additional supply would have to be brought in at a price equal to the mill price of this distant mill plus freight to this local market.

5561 Q. Well, now, assume that under both of the plans the dollar base price, or mill price, as the case may be, is as low as competition could possibly force it to go, and with that further assumption, now directing your attention to the freight absorption by the distant mill in his shipments to this local mill location, who has paid the cost of that freight absorption if the consumer at the local mill does not pay it?

A. You are asking now who—if I understand you, who pays the costs of freight absorption.

Q. Yes.

A. Under such circumstances.

Q. In the last analysis.

A. I don't think that anyone necessarily pays the cost of freight absorption. If a mill operating with a considerable substantial fixed cost, that plant is being operated at less than full capacity, and it is possible to get some business from a different market by making a concession, providing that concession does not carry your price so low as to be below direct out-of-pocket costs, then those additional units of sale made by this freight absorption method do contribute something to overhead cost, and they do not therefore constitute a cost to anybody, and, in fact, it is

possible, theoretically possible, that the people back near this mill who are paying the full mill net may actually be able to buy the product at a lower price than they
5562 could have done in the absence of the freight absorption.

Q. I am not asking you what they might or could have done. I am taking the situation that I have just put to you and I ask you, on the basis of the assumption that you have just made, that the freight absorbing sale into the more distant territory is made at such price as to net the shipper only a part of his overhead cost. Now, who in the last analysis has carried the balance of those overhead costs as a burden?

A. There is no balance of overhead cost.

Mr. Robison: He has answered that.

Trial Examiner Norwood: I do not think he has answered it. He answered it from another angle.

Mr. Robison: I did not so understand.

Trial Examiner Norwood: Go ahead.

A. There was no balance of overhead cost.

Let me explain. It is a difficult point, and I am not trying to avoid the issue.

Might I use an illustration? A manufacturer—a publisher is publishing a book. He is charging a price of $3.50 for that book in the United States. He sells a certain number of copies. A lower price than $3.50 he would deem to be impracticable in view of his total costs, but with the plates made, certain fixed costs incurred, it would be possible to produce and sell some more of these books,
5563 and he sells these books abroad at a lower price than $3.50.

Trial Examiner Norwood: Doctor, you are discussing this from the same standpoint that you answered the other question, who would pay this in the long run, or whether or not it would be profitable for him to take this loss. That is not what the question goes to.

Mr. Robison: May we have an understanding of what the question does go to, Mr. Examiner?

Trial Examiner Norwood: Yes.

Read it.

(Question read.)

Trial Examiner Norwood: Who carried that in the first instance, not whether it would be profitable for him to carry it.

The Witness: My answer is it is an impossible question. There are no overhead costs to be carried in the sense in which the question is put.

By Mr. MacIntyre:

Q. Doctor, you posed the situation where these freight absorbing sales to distant territory of the manufacturer more than covers his out-of-pocket cost and a portion of overhead cost. Now, I am asking you that as of that particular point of time where does he get the balance of his overhead cost that he does not at that time get on the freight-absorbing sale? Where does that come from?

5564 A. That would presumably come from the people who were buying the product before, the only difference being that previously—let me finish—the only difference being that previously those people we might think of as near the mill would be paying all of the overhead, whereas now they are paying all of it minus that part which is contributed by the sales on the freight absorption basis.

Q. I am talking about as of that point of time they are paying all of the overhead cost plus out-of-pocket cost plus a portion of the overhead cost on the freight absorbing sale. Isn't that correct?

A. Certainly not, because that implies that these overhead costs are added by making the freight absorption sales, which is contrary to your definition.

Trial Examiner Norwood: When you say that has to be balanced out with other costs that other customers have paid on the single transaction, somebody pays it, and then it is balanced up by what somebody else—what is included in the—

The Witness: No, sir.

Trial Examiner Norwood: —price paid by the customers?

Mr. Robison: I am sorry. I was not able to hear the question, Mr. Examiner. May it be read?

Trial Examiner Norwood: Read it.

5565 (Question read.)

Trial Examiner Norwood: I am asking him if that was the sense of his previous answer.

The Witness: No, sir; I am sorry, Your Honor. That was not. It isn't a question of averaging these things out. It is simply this: That my definition of fixed costs and overhead costs—terms variously used—are costs that do not vary with the volume of business.

Trial Examiner Norwood: Go ahead.

The Witness: Therefore, the fixed cost is not increased by the fact that you are selling goods at a distance and, therefore, there is not, as Mr. MacIntyre has just stated, any additional fixed cost that must be now loaded upon the people near the mill. They have—there is the same fixed cost that existed before, and that is shared partly by the people who are located at a distance and are enjoying these freight absorption sales.

By Mr. MacIntyre:

Q. But has the freight—

The Witness: All we can say, Mr. MacIntyre, it seems to me, is that the people at a distance do not pay as much of the overhead costs as do the people nearby. I would agree with that.

Q. But has the fact, the sole fact, of freight absorbing sales increased the total demand in the country so
5566 as to reduce overhead cost per unit on the total production of the country in rigid steel conduit?

A. No, that is a different question. I do not think that the use of one method or another is going to increase the volume of business done by all of the plants taken together. But that is not really the significant point from the point of view of overhead costs, because I do believe that you—that by one method, the uniform f.o.b. method, you would have a greater variability in the demand and possible output of particular mills than you would have under the other method. Now, that variability in demand with its peak loads requires the maintenance of larger individual plants—theoretically would require the maintenance of larger—larger fixed plants in order to take care of those peak loads, so that in sum total it would be my judgment that under such a plan you would have a larger total plant capacity with the same volume—same national volume of business than you have under a plan where mills make their sales in a larger market area.

Q. How would the last part of that answer be true, Doctor, if, after the total productive facilities of a local mill have been exhausted by the demand, the distant shipper, who is able through any productive facilities in existence, can ship in to the so-called local mill's territory and satisfy this additional demand?

A. I should say that there would be a powerful handicap to mills selling regularly in one another's territories. Now, it is true that if you get a very extreme situation, that the local mill is unable—it is absolutely impossible for it to satisfy the total demand, that then goods may be brought in from a greater distance. But as for this regular distribution of sales giving, as I conceive it, a degree of stability to the demand flowing to each mill and, therefore, stability to the output of that mill, it is my judgment that would be greater under the freight absorption plan than it would be under the uniform f.o.b. plan. 5567

Q. Is there any real sense to shipping into the territory of the local mill from the outside, from an economic viewpoint, until its productive facilities have been exhausted?

A. Now, I would have to ask whether you mean, Is there any sense in it from the point of view of—

Q. Economics, national economy.

A. That is a difficult question to answer. I would say specifically, as far as this particular point is concerned, if it were unrelated to anything else that has to go along with it, that, from the point of view of national economy, it seems to me there would be an advantage in having products supplied from nearby mills. But I can't say—

Q. That is, until their productive—

A. —that any—I don't think that I am unnecessarily extending this, because I do not believe that one can say that any given situation is an advantage without taking into account all of the other things that must go along to make that particular thing possible, and there would be a number of other things, such as, for example, the loss of point-by-point competition, that would have to accompany this type of situation. 5568

Q. Well, variations in demand with respect to the local mill's ability to satisfy them do not become a factor requiring shipments from outside until they exceed his ability to produce; do they?

A. Well, in one sense that is true. It doesn't require the bringing in of products from the outside in the sheer physical sense that—of the local capacity and the local demand. That would be true by definition.

Q. So these variations and fluctuations in demand which you posed as one of the requirements and premises for your assumption, the existence of which under an f.o.b. mill system would raise cost more than under a basing-point system,

do not apply until you have reached a point beyond which the local mills cannot satisfy demand; is that correct?

A. Oh, no, no. I wouldn't agree to that. It applies right along. There are fluctuations in demand. I don't know that one—I don't know whether it would be true that situations do arise in a particular area in this industry in which a mill could not possibly supply the existing demand, but there are variations in demand much short
5569 of that extreme possibility that you have mentioned where you just couldn't—physically couldn't produce the amount that you needed in a particular market.

Q. Well, until that is reached is there any soundness to the—that is, from the viewpoint of national economy, for cross-shipping and freight absorption from distant points into the local mill's territory?

A. I think that by this practice of freight absorption a mill does tend to stabilize its demand, its sales,—

Q. I am assuming, now, Doctor—

A. —and if it does stabilize its sales, that has a beneficial effect upon costs.

Q. I am assuming, Doctor, that it is not satisfying all of the local demand, but it is attempting to satisfy some demand thousands of miles away or hundreds of miles away, and it is permitting others to ship in under the basing-point system to its location and satisfy a part of its local demand. Now, do variations in demand which you have posed as one of the requirements for high costs, overhead costs, under the uniform f.o.b. mill system, tend to become any factor at all so long as cross shipping is permitted?

A. I have answered that question at least once, and I will answer it again and say yes, it does have an effect upon cost because an individual mill does tend to stabilize its total volume of business by selling in a variety of markets.

5570 Q. And despite the fact as to whether it is supplying all of the local demand?

A. Yes.

Q. Or even half of it?

A. Proportions would have nothing to do with that particular generalization.

Q. And it would, even if it doesn't supply 25 percent of the local demand, have a tendency to stabilize more than a uniform f.o.b. mill system would stabilize; is that correct?

A. I don't know how far one could go in percentages. One can say this: That the more local markets in which a mill sells the more stable its sales are likely to be. It seems to me that is almost self-evident.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Recess until 1:45, in Room 388.

(Whereupon, at 12:20 o'clock p. m., a recess was taken until 1:45 o'clock p. m., of the same day.)

5571 Afternoon session.

Room 388, 1:45 P. M.

Trial Examiner Norwood: Proceed.

CLARE E. GRIFFIN resumed the stand and testified further as follows:

Cross-Examination (Resumed) by Mr. MacIntyre.

Q. In your discussion on direct examination concerning identical delivered price quotations, you said that it is possible to have such and still have competition. Do you recall that?

A. Identical delivered price quotations?

Q. Yes.

A. Yes.

Q. It is possible to have that and monopoly at the same time, too, isn't it?

A. Oh, yes.

Q. Now, in the transcript between pages 5382 and 5386 you have discussed the matter of varying mill nets, varying mill net returns to the rigid steel conduit sellers, and the meaning of those things and significance.

I am going to ask you if the very fact of varying mill net returns is indicative of discrimination.

A. As for the use of the word "discrimination," if you mean discrimination in the sense in which it is used in

5572 the law, I would not—

Q. No. I am talking to you as an economist, Doctor.

A. —I would not pretend to have knowledge of it.

Q. I am talking to you as an economist.

A. I do not know that the term has a very precise definition. I think one might say, however, that selling to two different people located in the same way at different mill nets would be called discrimination, without any implication as to the legality or anything of that kind.

Mr. MacIntyre: May we have the answer read? I did not get it.

Trial Examiner Norwood: Read it.

(Answer read.)

By Mr. MacIntyre:

Q. Is it necessary that they be located at the same place in order to determine whether or not that with the other factors present there is discrimination?

A. As I say, I do not know that there is a sufficiently uniform and accepted meaning of the term "definition" so that I could answer that as an economist.

Mr. Robison: You mean the term "discrimination." You said "definition."

The Witness: "Discrimination"; yes, sir.

A. (Continuing.) To my mind I would not describe it as discrimination if a seller is selling to two people
5573 differently located, and I think in my own use of the word that I would not apply it to a situation where—or, let me put it the other way. I would only apply it to a situation where different mill nets were accepted from different buyers similarly located.

Mr. MacIntyre: I did not get that last answer.

(Answer read.)

By Mr. MacIntyre:

Q. Why must they be similarly located in order to determine whether that amounts to discrimination?

A. Well, it is just a matter of the use of terms. I feel that the supply and demand conditions would be different—might be different for different buyers, and that under those circumstances the acceptance of different mill nets would not be what I would call discrimination.

Q. Haven't you testified that you would have to look to mill nets, or that you would look to mill nets for the purpose of determining whether or not there was discrimination as between buyers on the part of a seller?

A. Well, I would look to mill nets, but in this use of the

term which I am just now describing one would have to also look to see whether those different mill nets were explainable by different conditions under which the buyers were existing, do business.

Q. Is it necessary to know what happens to the
5574 buyers in order to determine whether or not that the prices that they pay are discriminatory?

A. Well, in the use of the term that I have just given it obviously would be, but I am afraid we are just arguing about definitions. I—

Trial Examiner Norwood: Your concept of that term involves some measure of disadvantage, economic disadvantage, or prejudice by reason of the price differences?

The Witness: I use the term differently at different times. I think the term "economically significant discrimination" is sometimes helpful, and when I use that term I mean the charging of different prices to different buyers when those different prices have an economic effect, when the relative prices that they are paying have an effect upon those different buyers. But some economists do use the term to mean just any variation in the mill net; and a second use would be a variation in mill net not explainable by different conditions of the buyers; and a third use, this economically significant discrimination, which would bring in the thought of the effect of the discrimination upon the buyers.

By Mr. MacIntyre:

Q. Well, now, when you are talking about the effect of the discrimination upon the buyers you have in mind, do you, buyers who are buying the commodity for resale and are in competition with each other? Is that what you have in mind?

5575 A. Yes, generally speaking.

Q. And the effect upon that competition?

A. Yes.

Q. And it is your thought that when they are similarly situated and do not get different prices that there is no effect upon their competition such as would likely be if they did get different prices; is that correct?

The Witness: I don't think I understand that question.

Trial Examiner Norwood: Read it.

(Question read.)

A. If they are similarly situated and do not get different prices, then the pricing policy of the seller would have no effect, obviously, upon their competitive positions.

By Mr. MacIntyre:

Q. That is, it is your conclusion that it would not affect them competitively?

A. That is true.

Q. And would your conclusion in that respect be the same if a rigid steel conduit buyer who buys for resale is located in Washington and another one is located in Baltimore and the mill nets obtainable by the seller from those two are different?

A. I don't think the mill nets obtainable from the two have very much to do with the effect upon the buyers.

5576 The significant thing, from the point of view of the buyer, is the price that he has to pay. Now, how much it costs the manufacturer to get the goods to these different buyers is not a matter of particular concern to the buyer.

Q. All right. Suppose that one of the buyers is located in Philadelphia, another one is located in Altoona, Pa.; that the seller is located near Philadelphia; that the sale to his customer in Philadelphia on the basis of a delivered price quotation, which is higher than the delivered price quotation made to a buyer in Altoona, returns to the seller a higher mill net than a sale to his buyer in Altoona. What is your testimony there, as to whether it is discrimination?

A. If I were the buyer I would not care what—would not be particularly concerned with the mill net a manufacturer got. I would be concerned with the price that I was paying, and, particularly, I would be concerned with the price that I was paying relative to the price that some immediate competitor of mine was paying. Now, if it is true that this buyer of rigid conduit in Philadelphia can be said to be in direct competition with the buyer of rigid conduit in Altoona, then the relative prices paid by the two would be a matter of concern to the two, but if they are not in competition then it would not be a matter of concern to them.

Q. Suppose that the two buyers are buying for their consumption, the use of the conduit.

5577 A. Then, if they are buying for their consumption I should say that the relative prices that they pay is a matter of very little concern. Each one would be concerned, of course, with trying to buy at as low a price as he could buy, but he would not be concerned with the question whether that price was as low as, lower, or higher than the price some other consumer was paying.

Q. In other words, if he was buying for his consumption there could be no discrimination between him and other buyers; is that correct?

A. I wouldn't say there could be no discrimination. There could be none of this thing I have called economically significant discrimination.

Q. In other words, if a man charges one man $2 and charges another buyer only $1 for exactly the same good, if the two buyers are using the good instead of reselling it there is no economic significance in the difference in price; is that correct?

A. That is correct; but there is to my mind no economic significance in the difference in price unless you could go on further to show that the man who was paying $2 was paying $2 because the other man was paying $1. If you can trace that causal connection, then I would see the man who is paying $2 has cause for complaint, but the mere fact of the difference—and I think that was your question
5578 —but the mere fact of the difference would, to my mind, not be economically significant in the case of consumers.

Q. You think that the latter which you posed could be reasoned, however, that the man who pays the higher price, even buying it for his own consumption, that he would have a complaint; is that correct?

A. You mean if the—

Mr. Gilpatric: If what could be reasoned?

Could I have the question, please?

Mr. MacIntyre: The witness has stated a supposition there. Read his answer and my question.

(Answer and question read.)

A. Well, I can say that he would be concerned then at the fact that the other one was getting a lower price, if it could be shown that that lower price caused the higher price that he paid. Now, whether he has a complaint, in the sense of a justifiable complaint, would depend, of course, upon the circumstances.

By Mr. MacIntyre:

Q. Well, he would be concerned economically?

A. He would be concerned.

Q. Economically speaking?

A. Yes.

Could I go off the record a moment?

Trial Examiner Norwood: Yes.

5579 (Discussion off the record.)

By Mr. MacIntyre:

Q. Professor, I am showing you a portion of your testimony in Docket 3167, the Cement Case, page 43748. I ask you to look at that.

Mr. Robison: May I have the page number, Mac?

Mr. Gilpatric: 43748.

By Mr. MacIntyre:

Q. Do you recognize that?

A. Oh, yes.

Q. Now, is this your testimony:

"Q. In determining whether or not there is any discrimination there for which the manufacturer is responsible, would you nevertheless look only at the delivered price for which the railroads are partly responsible?

"A. No.

"Q. Just why?

"A. I would look to the relative mill net as indicating the return to the mill."

That is your testimony; isn't it?

A. Yes.

Q. Now, you have given some reasons here as to why a manufacturer would not sell f. o. b. his mill at varying mill nets. Will you state those reasons for us again?

5580 A. Well, there are—at the outset I can see that a manufacturer—did your question use the word "uniform mill net" or "uniform f. o. b."? I beg your pardon.

Q. No, I don't think I used that.

Mr. MacIntyre: Read the question to the witness.

The Witness: Read the question.

(Question read.)

A. I think a manufacturer who was quoting prices f.o.b. mill might at the outset attempt to use varying mill nets. I think, however, that there are rather strong forces which would tend to make that method of sale impracticable and would force the ultimate adoption of a delivered price method if the practice of varying mill nets was to be continued.

By Mr. MacIntyre:

Q. And what are those forces?

A. And one of those forces, a very strong one, I think, is the fact that the varying mill net is usually accepted by a manufacturer in order to meet local competitive conditions, and it is, therefore, essential that the manufacturer should

know what are the local conditions surrounding the particular buyer with whom he is dealing. And if one is selling on an f.o.b. basis it is difficult, if not impossible, to determine that with assurance.

Q. Haven't you stated that it would lead to dissatisfaction among the buyers to find that the seller was
5581 charging them varying mill nets when he was selling them on a basis of f.o.b. mill?

A. I don't recall whether I have stated that or not. I would agree to it.

Q. Haven't you stated that that is one of the objections for a seller attempting to use a so-called optional method of letting a buyer select or choose the manner in which he shall buy, as to whether it shall be on an f.o.b. mill basis or delivered price basis, that the buyer would weigh the advantages to him—

A. Waive?

Q. Weigh. —weigh the advantages to him and would take whichever one gave him the lowest cost?

A. I would agree to that. I don't recall such testimony.

Q. And he would do that because of it being to his advantage; is that correct?

A. Some buyers would find it to their advantage to do that, quite obviously.

Q. You have stated that—that is, on your direct examination here—that you do not think that the rigid steel conduit manufacturer could quote both on an f.o.b. mill basis not related to a basing-point method and also on a basing-point method at the same time, because efforts would be made to break down that plan of his. Do you recall that testimony?

A. Well, I am quite sure I didn't use precisely
5582 those words but the—that is the substance of what I would testify to.

Q. You don't think you used the words "breakdown method"?

A. It doesn't matter if I did. That is all right.

Q. Now, what would operate the breakdown method?

A. Well, I think I explained that a minute ago, that buyers would tend to represent that they came from points where competitive conditions would be favorable to them, and the manufacturer would have no way of determining whether that were true or not. Also that buyers who did actually come from a town where competitive conditions

were favorable to them might buy the product and then transport it to another town for use where those special conditions did not exist.

Q. Now, you told us this morning that until a man was proven to be a pickpocket that you didn't think that he should be assumed to be a pickpocket. Are you assuming that businessmen would go to a seller and lie as to where they are going to carry this cement, without proving first that they would do so, or are you accepting that as a part of normal business operation?

Mr. Austin: Are you trying the Cement case? You said "cement."

Mr. MacIntyre: I mean conduit there where I have used cement.

Trial Examiner Norwood: Go ahead.

A. Well, I don't like to cast that much of a reflec-
5583 tion upon business men generally, but I think it is the likelihood that there would be enough instances—not necessarily a matter of lying—of people buying a product perhaps actually intending to use it at one place and then reselling the product, and I don't see that the manufacturer could require that the man who had bought it at a favorable price would be prohibited from selling it to anyone else. I suppose he could not, and, therefore, even under the assumption that they were all scrupulously honest, you would have the difficulty.

Trial Examiner Norwood: You allow for a certain amount of business finesse?

The Witness: Yes, sir.

By Mr. MacIntyre:

Q. When a seller is selling in a fully competitive market and one that is freely competitive with all other locations, is it necessary for him to put around his sales restraints to prevent his buyers from reselling or reshipping it to some other market in order to protect the seller and the seller's pricing methods?

A. One cannot answer that question generally to say that whenever you have a fully competitive market those conditions will exist, but I can—I can say that there are situations in which a market is fully competitive and in which that requirement might well exist.

Q. Well, under freely competitive conditions in a
5584 true market, is it normally a concern of a seller as to whether the buyer eats, sells, or otherwise uses the

goods that are sold, in so far as the pricing method of the seller is concerned?

A. There are a number of terms used there that might require special definition, but I would say that when a manufacturer is selling in a particular market that usually it is not necessary for him to determine how that product is going to be used in that market,—

Q. Or any other market?

A. —referring to "market" now as the point where the product is bought and sold; but still one would have to qualify that. There are certain situations in which one would be concerned, I think, with the uses that would be made of the product that is sold. I don't think one can generalize about it, Mr. MacIntyre.

Q. Except in the way that sellers are concerned and prompt them to seek enforcement of the so-called fair trade laws in resale price maintenance in locations where their goods are resold, are sellers of rigid steel conduit, as you see it, concerned with whether a buyer in securing their conduit from them on an f.o.b. mill price should take it and ship it somewhere else?

A. Yes; I think a seller of rigid conduit would naturally be concerned with that whenever he is selling in a market which requires price concessions, that is, the freight
5585 absorptions that we have been talking about this morning.

Q. But he is concerned because of a fear on his part that the buyer will take it at the mill and after he has bought it ship it somewhere else and thereby affect the delivered price quotations of the seller? Isn't that what you mean?

A. I mean that he is concerned because he is under the condition that I mentioned, making some sales at specially low prices in order to meet competitive situations, and he naturally does not want to be forced to make those same concessions where those special competitive situations do not exist.

Q. But when he sells the goods to a buyer f. o.b. mill at the price prevailing at his mill, and at no other price, is he concerned with what that buyer does with the goods later in shipping them into some other territory, except in so far as he fears that it will have an effect upon his delivered price quotations at that other point?

A. Well, on the assumption that you have made, he

would not be concerned, I think. That is, you made the assumption that he was selling at one price at the mill and at no other price. Then he would not be concerned.

Q. That is, when buyers take it at the mill he is only selling at the price at which he sells his particular buyer. Now, is he concerned with whether or not that that buyer, after he buys the goods, ships them to some other location, except with respect to his fear that the buyer in doing
5586 so will have some effect upon a delivered price quotation?

A. He would not be concerned at all if he were selling—if he were always selling at the same price to all the buyers at his mill, then he would not be concerned with what they did with the product.

Q. Well, if he were selling at different f.o.b. mill prices and was not quoting prices at any place other than at his mill, what concern would it be to the buyers for one to get a lower price than the other, under those circumstances?

A. What concern would it be to the buyers?

Q. Yes.

A. Well, a buyer always wants to get as low a price as he can, of course.

Q. And he would attempt to do so after he found out that someone else was buying lower than he was at the seller's mill; is that correct?

A. Yes, I assume he would. He would attempt to do so whether he found that out or not. He would always try to get as low a price as he can, of course.

Q. You consider that it would be normal for him to complain to the seller if he found that the seller was charging less to someone else at the mill than he was charging to this one buyer for the same goods?

A. I would expect him to complain, yes.

Q. That would be one of the difficulties that the
5587 seller would run into in attempting to sell buyers at different mill nets when he was selling to all of them on an f.o.b. mill basis; wouldn't it?

A. Well, I suppose—yes, it would be. I—in fact, I said so just a few minutes ago. This is just repeating what I said, but the point is that it would not be so easy for the manufacturer to explain why he was giving a concession to A and not to B, at least to give it in such a way as would be convincing to A; whereas, when he is selling under a delivered price basis, the reason is quite obvious on the face of it.

Q. Is that the reason that you stated on direct examina-

tion, that you said—is that the reason that you said in your testimony on direct examination that any proposal prohibiting the use of the basing-point method should be taken to mean that a uniform f.o.b. mill plan should be adopted?

A. Yes. My several previous answers to this one will give the reason for that conclusion.

Q. You recognize as an economist that you do not have a state of inelasticity of demand when the product involved can be freely substituted for by other products of a slightly less cost as to the buying price; is that correct?

A. I recognize that the possibility of substitution is a factor making for elasticity of demand. However, to what extent it gives you elasticity depends upon how close these substitutes are in quality and in price.

5588 Q. In other words, to what degree that they can and will be used as substitutes?

A. That is right.

Q. Is it your testimony as an economist that price discrimination cannot be practiced, and is not practiced, under conditions of monopoly?

A. Oh, no. No. Certainly not.

Q. Can you, as an economist, say whether or not that cross-hauling of homogeneous or standardized commodities is or is not economically justified without knowing the extent, the nature, and effects of it, and the motives of those practicing it?

A. As far as being economically justified from the point of view of an individual business man operating in competition, I would assume that he would be the best judge of that. If he does engage in a practice which when followed by others results in cross-hauling, I would conclude that he, at any rate, felt that it was economically justifiable from his point of view.

Q. Now, answer my question with respect from the point of view of national economy.

5590 A. Well, I think, to give you a definite answer about a particular situation, one ought to know to what extent the practice is carried on, but to know that would require at the same time that you know quantitatively the value of the type of competition that goes along with it and all of the other considerations that are part of the same general picture in which cross-hauling exists, and you can't possibly know all of those things. No one could put a precise measurement on the value of ordinary business competition. They defy quantitative measurement.

By Mr. MacIntyre:

Q. One of the important things that you would have to know is whether those practicing it are practicing it
5591 to lessen competition or to increase competition, wouldn't you? That is, as to whether it is their motive to lessen it or to increase it.

A. Well, strictly speaking, I suppose it does not matter what their motives are. It is what happens that really counts.

Trial Examiner Norwood: Wouldn't that be important in determining its nature?

The Witness: Well, that is included under my term "what happens." If you had a form of cross-hauling that had some peculiar undesirable effects, naturally that would lead one toward the conclusion that it was undesirable.

By Mr. MacIntyre:

Q. Well, you have stated that cross-hauling impinges upon the seller. Do you mean that the seller, and not the buyer, when the buyer pays the price for the goods, has not paid the cost of the burden of carrying cross-hauling?

A. I think I said that in the first instance the cost of hauling goods a greater distance than necessary to get them to market would rest upon the seller. Now, how in the long run, and in the complicated ramifications of economic forces, how that finally comes to rest and where it comes to rest is very difficult to say.

Q. You are not prepared—

A. In the first instance, you could not say that the
5592 cross-hauling is borne by the buyer of the goods that are cross-hauled, because the very reason for the cross-hauling is that he is getting an exceptionally low price.

Q. Well, are you prepared to say where it impinges in the last analysis?

Mr. Gilpatric: I object to that, Your Honor, because it is duplication.

Mr. Austin: We have been all through that this morning.

Trial Examiner Norwood: Objection sustained.

Mr. MacIntyre: I submit I have not covered on cross-examination that part of the direct examination which appears in the transcript at page 5424, and that is where these questions are directed.

Trial Examiner Norwood: Objection sustained.

By Mr. MacIntyre:

Q. Directly after the testimony that appears on that page, Dr. Griffin, you stated that a manufacturer is entitled to the advantages of location.

Is it also your testimony that a buyer and a consumer of the merchandise is not entitled to the advantage of his location?

A. I would like the words read where I said that the manufacturer was entitled to advantages of location.

Q. You do not think that you used them in this
5593 record; is that correct?

A. I did not say I did not, but I can't recall every word I have said. I do not recall using that word.

Q. Well, it will take time to look up the record.

The Witness: I think, Your Honor, I can answer this question without taking this time, if you wish.

Mr. MacIntyre: Read the question.

Trial Examiner Norwood: Read the question.

(Record read.)

Trial Examiner Norwood: Can you answer it now without looking up the record?

A. I would not regard either of them as a matter of being entitled to advantages, although one might possibly use the term if he is not speaking too strictly. I would rather say that the manufacturer might well gain an advantage of location, and especially if he locates in a place, let us say, near to a market where a relatively high price is prevailing. He would in the normal working of economic forces under those circumstances derive an advantage of location until either he attempted to expand his business beyond the demand of that local market, or some other manufacturer moved in in an attempt to gain the same advantage, under which circumstances the competition of these two might force the price down to a point where the advantage would no longer accrue to him.

By Mr. MacIntyre:

5594 Q. Well, a buyer who locates with reference to market and the sources of supply should not be denied the advantages which caused him to so locate any more than a seller should be denied any advantages that he saw and which caused him to locate anywhere, should he?

Mr. Robison: I object, Mr. Examiner. I do not understand that—

Trial Examiner Norwood: Objection sustained.

By Mr. MacIntyre:

Q. Do you recognize that an administered price could also be a monopoly price?

A. No, I do not. As the term is commonly used, it does not refer to monopoly prices.

Q. It is your testimony as an economist that a monopolist cannot administer a price; is that correct?

A. No, I do not say that. You are using a term which calls for definition. My understanding of the term "administered prices" was that it referred to competitive conditions of a particular kind.

Q. Do you recognize that the use of the basing-point method lessens the conflict in self-interest of sellers?

A. No.

Trial Examiner Norwood: Does it change the nature of it?

The Witness: Yes.

5595 By Mr. MacIntyre:

Q. I show you testimony that you gave in Docket 3167, page 43588. I ask you if you recognize that.

(The witness examines the testimony referred to.)

Q. Do you recognize the testimony to which I have called your attention as your testimony in that case?

A. I do not recall it, but I am willing to take your word for it that it is. I assume that it is.

Q. Will you accept it as your testimony here?

A. Yes.

Q. And is that testimony to this effect:

"Q. Are not some of the important conflicts of self-interest eliminated by this method of marketing?

"A. I would not say that they would be eliminated. The self-interest, some of it conflicting and some otherwise, given free play, gives rise to this method of marketing.

"Q. Well, you assume that there is some conflict of self-interest in the industry. I am asking you whether some important matters of conflicting self-interest are not eliminated or substantially lessened by this method of marketing.

"A. I suppose they might be, yes."

Those statements appear in your testimony, do they?

5596 A. Yes.

Q. Is it your testimony that these effects which

you testified about on your direct examination as would likely occur if one manufacturer should switch from the basing-point sistem to a uniform f.o.b. mill system the same as they would be if, instead of assuming a switch by one manufacturer, you assume a switch by all?

A. Did the question use the words "uniform f.o.b. system"?

Q. Yes.

Trial Examiner Norwood: Read it.

(Question read.)

A. No. I think there would be a difference. Some of them would be the same. I recall pointing out that I thought there was a gain in stabilization of the volume of business of particular mills that came from selling in several markets, and that would be lost if the uniform f.o.b. mill plan were adopted. That conclusion would be equally true whether the plan were generally adopted or adopted by some individual firm.

By Mr. MacIntyre:

Q. There would not be any difference in that element, then?

A. I would not think so as to that element.

Q. There are other elements in which there would be a difference in the effects; is that correct?

A. I suppose there would be some in which there
5597 would be differences as to whether the plan were uniformly adopted or whether one concern adopted it. I have some difficulty with the question, because I can hardly imagine one company successfully adopting the plan in the absence of concerted action on the part of the others.

Q. They could more successfully adopt it if all adopted it than if one or two adopted it; is that correct?

A. I think that is very true, and that the—that is enough.

Q. You, as an economist, recognize that price leadership is implied in the concept of imperfect competition, do you?

A. No, sir; not necessarily implied in the term.

Q. Haven't you stated that it is?

A. Well, I hope I never said that. But it would be true that where you had price leadership you would have imperfect competition, but you do not always have price leadership under imperfect competition.

Q. I show you your testimony in Docket 3167, page 43091. I ask you if you recognize that.

A. (After examining.) Yes.

Q. Now, you recognize this as a part of your testimony:

"Q. How do economists recognize that market leadership is a common or uncommon phenomenon in American industry?

"A. Oh, it is a very common phenomenon. In fact, it is implied in the concept of imperfect competition that
5598 sellers are keenly—are aware of the policies of others and are adopting their policies to the policies of the other sellers."

Is that your testimony?

A. That is my testimony.

It is clear that I was using the term "imperfect competition" as in fact almost explained in the latter part of that answer, referring to the fact that in a market one person changes a price and other people adapt themselves to that price.

I confess at the moment, when you spoke a moment ago of price leadership I was thinking in a different—thinking that you had in mind a different thing, namely, a rather recognized leader in an industry, which is another sense in which the word is commonly used. I did not mean to imply that that kind of thing is implicit in the concept of imperfect competition.

Q. Do you agree that the only way to determine whether competition has been lessened in any particular situation is to look to the history of what has occurred and examine the history of the operations?

A. That is one concept, certainly, it seems to me, of lessening of competition, that it should be less than it was at some previous time. Another concept is that of it being less than it would be in some alternative situation.
5599 Q. But in figuring out the latter course it would have to be done by a matter of deduction, wouldn't it, and that only; is that true?

A. Well, I suppose when you are considering alternatives you have to use some deduction. I think you also have to do that when you make a historical comparison. You will never find two situations at different times that are precisely the same, except in the one—except in respect to the one thing you are investigating.

Q. You recognize that most of the sales, if not all, as

made by a non-base mill under a basing-point system are discriminatory, do you?

A. Well, I—that question can hardly be answered "yes" or "no".

In one sense you can say that if you have a thousand sales all made at the same price, and one sale made at a different price, that then they are all discriminatory in that they are all different from some other possible sale.

Q. Haven't you stated that, "Well, there is a number of definitions of discrimination, but even if we take the definition of discrimination as being the selling of a product at such prices as would yield different net returns to the sellers, even if we take that, I do not think that you can say that all—then probably under those circumstances, most, but not all, of the sales of a non-base mill would be discriminatory"?

5600 A. That is right.

Q. That is your statement, isn't it?

A. Oh, yes. Yes. I would accept that with the explanation that I have just given, that they are discriminatory in the sense that they are different from some other prices that this same manufacturer is charging. That is obviously true.

Q. You also recognize that price rigidity can result not only from all of these things that you stated on direct examination that it could result from, but as well from retaliation or fear of retaliation; is that correct?

A. I suppose it could, yes.

Q. Well, do you recognize that it could result from a fear of retaliation as well as those things that you stated to Mr. Robison that it could?

Trial Examiner Norwood: He just answered the question.

Delete it.

Mr. MacIntyre: I want to know whether or not it is his answer that it could, rather than just a supposition on his part that it could.

Trial Examiner Norwood: Can you state that?

The Witness: I can't answer that question "yes" or "no." I would say that fear of retaliation might be a factor contributing to rigidity.

By Mr. MacIntyre:

5601 Q. Do you agree with this statement:

"Although it is essential to draw a sharp distinc-

tion between sporadic and constant uniformity in fields in which price is determined by direct negotiation between buyer and seller in each transaction, there is no need for a similar distinction in the case of competitive bids."

Do you agree with that?

A. I don't see now what the statement meant without the context. I assume you are quoting from my statement, but I don't know what I was—what the statement related to.

Mr. MacIntyre: Well, read the statement to the witness.

The Witness: It is not self-explanatory to me now.

Trial Examiner Norwood: We will have ten minutes' recess.

Have you finished that answer?

Mr. MacIntyre: I don't think he has, but—

Trial Examiner Norwood: Did you finish that answer, Doctor?

The Witness: As far as I am concerned, I have.

Trial Examiner Norwood: Ten minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Cross-examine.

5602 Mr. Robison: You mean redirect. I have no questions on redirect.

Trial Examiner Norwood: Thank you, Doctor. You are excused.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. Gilpatric: Professor Wernette.

J. PHILIP WERNETTE, being called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Gilchrist.

Q. Professor Wernette, I hand you a statement of what purports to be your training, experience, and qualifications as an economist, and ask you whether you have previously seen that statement?

A. Yes, I have seen this statement.

Q. Does that statement correctly set forth your training, experience, and qualifications?

A. It does.

Q. You testify as to the truth of the statements contained therein?

A. Yes, I do.

Mr. Gilpatric: I ask that the statement that the
5603 witness has so verified be incorporated into the record as his testimony in order to save time, if that is agreeable.

Mr. MacIntyre: Well, I object to any further testimony from economists dealing with matters that we have been going over here for the past two weeks. I think that since counsel for Respondents have not seen fit to come to me before putting on their first economic witness and asking for some consideration as to an agreement in limiting the number, that Your Honor should now invoke some rule of limiting the number of experts to be called in any one field by either Respondents or the Commission. It is in the public interest that such be done.

Trial Examiner Norwood: Well, now, the matter before us now is whether or not these qualifications here of the witness, who has been sworn and is now on the stand, shall be incorporated in the record, and I direct that it be incorporated as follows:

I am Associate Professor of Business Economics at the Harvard Graduate School of Business Administration. I took my A.B. degree in 1924 at the University of California; and A.M. degree in 1926 at the University of Southern California, and a further A.M. degree in 1929 at Harvard University and my Ph.D. degree in economics in 1932 at Harvard University.

From 1924 to 1926 I was Instructor in Economics at
5604 the University of Southern California. From 1927 to 1934 I was Instructor in Economics and tutor in the Division of History, Government and Economics at Harvard College. Since 1934 I have been Instructor, Assistant Professor and, as I have stated, am now Associate Professor of Business Economics at Harvard Graduate School of Business Administration. The principal subjects that I have taught have been Economic Theory and Marketing.

My principal writings have been as follows: "Money, Business, and Prices," published in London by P. S. King & Son in 1933; "The Control of Business Cycles," published in New York by Farrar & Rinehart in 1940; and some

eight or ten major articles in the field of economics in journals in that field including American Economic Review, Quarterly *Journal of Economics, Harvard Business Review* and Journal of Marketing.

In 1929, from January to September, I was a member of the Commission of Financial Advisors to the Republic of Colombia. In 1931, from January to May, I was a member of the Commission of Financial Advisors to the Republic of Peru. In 1932 and 1933 I was Fellow of the Social Science Research Council; I was in Great Britain studying the British banking and financial systems.

Trial Examiner Norwood: Now, off the record just a minute.

5605 (Discussion off the record.)

Trial Examiner Norwood: Back to the record.

Respecting the remarks of counsel as to limiting the—any further economic testimony, the point is well taken, but I do not think it proper to make an arbitrary limitation there. I simply want to know what you want to show. I shall exclude cumulative testimony, expert or not expert, and I will ask the counsel, though, to make an offer of proof on this witness here, to state what he wants to show by him, other than what has been shown by the preceding witnesses.

Mr. Gilpatric: Your Honor please, as you well know, the complaint in this case charges, unlike the complaint in the Cement case or any other case the Commission has brought, to my knowledge, that the use of the basing-point method of pricing per se is a violation of section 5 of the Act. Now, we feel that it is most important that the record in this case contains basis for the instruction and guidance of the Commission and the courts. The fact that Your Honor and Mr. MacIntyre are so well versed in this subject from the Cement case does not seem to me to be pertinent here. Now, we had planned to call five economic witnesses. In selecting those witnesses we had selected two men, because of their positions in the field—three men, in fact, who had testified in the Cement case. Two of those men you have heard. Now, the next witnesses, Professor Wernette
5606 and Professor Vanderblue, are men who have not appeared in the Cement case, whose views on some of the subjects about which they will be questioned are not merely duplicating or cumulating what has been said.

Furthermore, we have gone through very carefully the subject matters to be covered with this witness, and with

Professor Vanderblue, and I think it will be apparent to Your Honor that we are not simply cumulating unnecessarily the evidence in the record.

Now, I would like to go ahead with my questioning, and I suggest that counsel for the Commission make specific objections if he feels at any stage that we are unduly duplicating the record or adding to the record on the economic testimony. I don't think that Your Honor in this respect ought to simply make an arbitrary ruling, that you ought to be as fair to us as you have in all the other respects in this case, and we intend to conclude, if we can, this week.

Now, I understand that the counsel for the Commission is not prepared with his rebuttal at this stage. On our examination of Dean Griffin the cross-examination consumed considerably longer than the direct examination. We expect that the direct examination of this witness will be considerably shorter, and I certainly hold out that we will not continue this to any undue lengths.

Mr. MacIntyre: Well, my objection still stands, and I ask if I am overruled on that objection that we take an
5607 adjournment until 10 o'clock tomorrow morning and let us have an effort to have this point argued before the Commission.

Trial Examiner Norwood: You mean that you are going to—

Mr. MacIntyre: That is, if I should be overruled on my objection, I do intend to—that is, if you overrule the objection and consider that the Respondents are within their rights, in the face of an objection, in bringing on another witness, or even several additional witnesses of this character in this field, whether they testify on exactly the same questions or not I want to—

Trial Examiner Norwood: Well, I am going to overrule your objection, but I shall not take any recess. You will have plenty of time to appear before the Commission, and they can let me know before 10 o'clock tomorrow morning whether or not there is to be a hearing on it, and in that case when they notify me I will adjourn until after the hearing is over.

Mr. MacIntyre: Well, may I have the—

Trial Examiner Norwood: Now, I am going to say with respect to this economic witness that I am not going to receive cumulative evidence on it, and if you have a few points to show by various witnesses, I am not going to draw

the line or make the classification on number of witnesses, but I shall not let it be cumulative, and I shall be very
5608 sympathetic to objections on that ground because we have covered these things very thoroughly here.

Mr. Gilpatric: As I stated, Mr. Examiner,—

Trial Examiner Norwood: And you are appearing—strike that last.

Go ahead.

Mr. Gilpatric: I started to say that I think we have anticipated those objections in preparing our questions for this witness.

Trial Examiner Norwood: Yes. Proceed.

By Mr. Gilpatric:

Q. Professor Wernette, in your studies and teaching have you given attention to the subject of marketing and the pricing of merchandise?

A. Yes.

Q. Have you also given attention to the study of the basing-point method of quoting and determining prices?

A. Yes.

Q. Professor Wernette, I am going to ask you a hypothetical question which sets forth certain facts which were stated in a previous question asked earlier witnesses. The question was referred to for convenience as hypothetical question A. The facts for that question, a statement of which I hand you, are already in the record at pages 4902 to 4913.

I ask you, first, whether or not you have seen that
5609 statement of facts and are familiar with it?

A. I have seen it and am familiar with it.

Q. Now, with those facts in mind, will you state whether, in your opinion as an economist, on the facts assumed in that statement, could the method of pricing referred to develop and continue to exist in an industry where competition prevails?

5610 A. Yes, it could.

By Mr. Gilpatric:

Q. Now, Mr. Wernette, what do you understand to be a basing-point method of quoting prices for and selling a product, in order that we may know what you mean by that term in your testimony?

A. Well, I take the term "basing point"—

Mr. MacIntyre: If Your Honor please—just a moment—I object to the question. It is cumulative in the record.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. I understand the term "basing-point method" to refer to the quoting and selling by the seller of a product, in some cases basing the price on points not being the point of manufacture.

Mr. MacIntyre: May we go off the record?

5611 Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Proceed.

By Mr. Gilpatric:

Q. Professor Wernette, is the basing-point method of pricing one that you, as an economist, would recognize as a competitive method of pricing and selling merchandise?

A. Yes, it is.

Q. According to any business behavior observed by you, as an economist, could the use of such a method arise as a result of competitive forces?

Mr. MacIntyre: I object. It is cumulative.

Trial Examiner Norwood: Overruled.

A. Yes, it could arise as the result of competitive forces.

By Mr. Gilpatric:

Q. In order to have such a method used, would certain of its elements have to be planned in concert with other manufacturers and sellers?

Mr. MacIntyre: I object to that. There has been no foundation laid to establish the competency for the question; furthermore, it calls for cumulative testimony.

Mr. Gilpatric: In answer to that objection, Mr. Examiner, I have purposely left out here about 60 questions addressed to general economic principles in order to save time and avoid cumulation. Now, if there is lack of foundation for that question it is due to that desire on my

5612 part to avoid unduly stringing out the question.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: But we can't take a summary of what all the other testimony is without laying a foundation for the summary.

(Question read.)

Trial Examiner Norwood: Objection overruled.

A. No, they would not have to be planned in concert.

By Mr. Gilpatric:

Q. And once such a method has come into use, would some disciplinary machinery be required in order to continue the method in operation?

Mr. MacIntyre: I object to that. There has been no foundation laid to show that it calls for any competent testimony, and even if that were done it would still call for cumulative testimony.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Gilpatric: That is simply supplementary, Your Honor, to the question I just asked. I covered it in my first—

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: In view of Your Honor's
5613 wishes, I will withdraw the question.

Trial Examiner Norwood: All right.

By Mr. Gilpatric:

Q. Under the conditions stated in hypothetical question A, Professor Wernette, in your opinion is a conduit manufacturing company selling in one market or in a series of markets?

Mr. MacIntyre: I object to that. In the first place, there has been no foundation laid for the question; and, furthermore, it calls for cumulative testimony in the record, unduly cumulative.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Gilpatric: I am simply attempting to lay a foundation, the lack of which Mr. MacIntyre objects to.

Trial Examiner Norwood: Objection overruled.

A. I would say a conduit manufacturing company is selling in a series of markets.

By Mr. Gilpatric:

Q. Why do you say in a series of markets?

A. Because in the several regions it is selling supply and demand conditions may vary.

Q. Under the assumed conditions, in your opinion, what

advantages if any accrue to this conduit manufacturer in seeking to sell its product in several markets?

Mr. MacIntyre: Object to that. There has been no
5614 foundation laid to show that this witness is competent to testify in answer to that question, and it, even if he were, would call for an undue accumulation of testimony in the record on the point.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

A. Well, he would gain by the familiar principle of diversification of risks. The more markets in which he sells the less his fortunes are tied up with the rise and fall of demand and competitive conditions in each of the several markets.

By Mr. Gilpatric:

Q. In order to be in a position to compete for a share of the business, when demand springs up in a particular market, under the conditions assumed in hypothetical question A, what marketing arrangements would, to you as an economist, appear to be necessary for the conduit manufacturing company?

Mr. MacIntyre: I object to that. It calls for an accumulation of testimony in the record, unduly so.

Trial Examiner Norwood: Objection overruled.

A. The manufacturer would have to have established relations with contractors and dealers.

By Mr. Gilpatric:

Q. Will you explain, Professor Wernette, your use of that phrase "established relations" in your testimony?

5615 A. Well, I mean by it that his salesmen would already have had to call on these persons so that the salesman and the officers of the company would become acquainted with them and so that the buyers would become acquainted with the—with the seller, with its goods, and its services, so that they would know whether or not they could do business with one another.

Q. In your opinion as an economist, tell us whether or not that sort of a marketing arrangement is competitive or non-competitive?

Mr. MacIntyre: I object to that. It calls for incompe-

tent testimony, not one of economic theory, but a speculation. There has been no foundation laid for it to show that this witness is competent to answer it, and it calls for cumulative testimony on the point, an undue accumulation.

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: That is based on these hypotheses; is it?

Mr. Gilpatric: It is.

Trial Examiner Norwood: Objection overruled.

A. These—

Trial Examiner Norwood: Now, off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back to the record.

It is understood that the counsel for the Commission
5616 may have an exception to the remainder of this witness' testimony on the grounds that it is cumulative.

A. It is competitive.

Trial Examiner Norwood: Yes. Answer the question.

By Mr. Gilpatric:

Q. Professor Wernette, what do you understand by the term "principle of indifference" as used by some economists?

A. I believe that it means that sellers are indifferent to which buyers they sell, and buyers are indifferent as to—from which sellers they purchase.

Q. In your opinion, under the conditions assumed in hypothetical question A, does this so-called principle of indifference have any applicability in the pricing and marketing of rigid steel conduit?

A. No.

5617 By Mr. Gilpatric:

Q. Professor Wernette, in your conception of competition, as an economist, does competition exist where one seller of a standardized commodity merely meets—that is, makes his price the same as the price of a like seller in the same market, or is it essential, in your opinion, in order for competition to exist that the one seller makes his price lower than the other seller?

A. Well, in my opinion, merely meeting the prices of other sellers is truly competitive.

Q. Professor Wernette, in your opinion as an economist,

under the conditions assumed in hypothetical question A, is conduit a homogeneous product?

A. Yes, it is.

Trial Examiner Norwood: Now, how do you know that?

5618 The Witness: It is stated in the statement of facts that it is a standardized commodity which must conform to the minimum standards of the Board of Fire Underwriters, and it is further stated in the statement of facts that such small alleged differences of quality as sellers might claim were not enough to induce buyers to pay any more for one manufacturer's output than that of another.

Trial Examiner Norwood: And you are basing your statement on these assumptions, then? You are simply classifying it according to the assumptions; is that correct?

The Witness: Yes, sir. The description of the commodity as given in the facts conforms to that of a homogeneous commodity.

Trial Examiner Norwood: I see. All right.

Mr. Gilpatric: I simply asked the question, Your Honor, because the term "homogeneous" has been used a great deal here, and I thought we ought to tie it down.

Trial Examiner Norwood: I took it for a factual statement.

Mr. Gilpatric: Well, I simply asked him on the basis of the facts assumed.

Trial Examiner Norwood: Yes. Well, go ahead.

By Mr. Gilpatric:

Q. Professor Wernette, in your opinion as an economist, are varying factory net proceeds per unit sold inconsistent with the principle that prices of different sellers tend

5619 to be uniform under competitive conditions in any one market?

A. No, they are not—not inconsistent with it. Indeed, it would be a necessary consequence in many cases, such uniformity.

Q. Would such varying net proceeds—would or would not such varying factory net proceeds per unit sold be indicative to you as an economist of a failure of the seller to follow his self-interest in a normal competitive manner?

A. No, it would not be an indication of such failure.

Q. Based on your observations of business behavior as a student and teacher of economics and marketing, if a con-

duit manufacturing company generally refrained from quoting f.o.b. factory prices that were independent of and unrelated to delivered price quotations determined from a basing-point formula, to what would you attribute that refraining?

A. Well, I think approximately—

Trial Examiner Norwood: Wait a minute.

Read that question.

Mr. MacIntyre: That question does not call for a statement of economic theory. It is objected to.

Trial Examiner Norwood: It is sustained.

By Mr. Gilpatric:

Q. Referring, Professor Wernette, to the conditions assumed in hypothetical question A, if each of the conduit manufacturing companies were forbidden by an order
5620 of a Government commission or by a decision of the courts to quote prices which were related to the delivered prices in the various markets in which such companies hoped to sell, in your opinion as an economist would that result in increasing or decreasing the number of competing sellers in the several markets?

Mr. MacIntyre: I object to that as incompetent, irrelevant, and immaterial.

Trial Examiner Norwood: I permitted—

Mr. Gilpatric: Your honor—

Trial Examiner Norwood: —the Respondents to put in some economic opinion on that subject—

Mr. Gilpatric: This question has not been asked before, Your Honor.

Trial Examiner Norwood: —going to the very broad issue of public interest.

Mr. Gilpatric: But now we are getting down to a very specific question on which I want to get this man's view as an economist. Would there be an increase or decrease in the number of competing sellers? That is not so much a question of national economy, about which we have heard so much this morning, or of national interest. It is a question about which this witness, as an economist, is entitled to express a view. It has not been asked before.

Mr. MacIntyre: It calls for incompetent testimony
5621 in that it does not call for economic theory but speculation and guesses from a witness for which there has been no foundation laid for him to testify; and further-

more it deals with an irrelevant and immaterial subject in this case.

Trial Examiner Norwood: Read that question again.

(Question read.)

Trial Examiner Norwood: Objection sustained.

By Mr. Gilpatric:

Q. In your opinion, Professor Wernette, if all of the manufacturers of rigid steel conduit were, in effect, forced to quote uniform f.o.b. mill prices, might some economies result—

Mr. MacIntyre: I object.

Q. —therefrom?

Mr. MacIntyre: I object.

Trial Examiner Norwood: Sustained.

Mr. Gilpatric: Well, let me express it this way, then:

By Mr. Gilpatric:

Q. Would any advantages of competition that exist under a delivered price system be sacrificed under a uniform f.o.b. mill price system?

Mr. MacIntyre: I object. It calls for incompetent—

Trial Examiner Norwood: Objection sustained.

We have spent quite a little while with these distinguished economists. We have even indulged in some
5622 interesting speculation, and I think it has been very good to throw light on these matters, and we have done it heretofore, but we have reached a point where we have to streamline it.

Mr. Gilpatric: Well, Your Honor, I must make this one comment on the use of the word "speculation" in applying to this economic testimony. You would not have any science of economy if economists were not entitled to project forward based on principles that have been derived from observation and experience in the past. Now, if that is speculation, why, then, we can't ask any questions of economic witnesses.

Trial Examiner Norwood: I think you can. I think it is different there.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

Mr. Gilpatric: I offer to prove through this witness the economic theory and views bearing on the results that

would flow if the manufacturers of rigid conduit were required to quote f.o.b. factory prices that were independent of and unrelated to delivered price quotations determined from a basing-point formula, including the effect on the manufacturing operations of the various conduit manufacturing plants, the costs to the manufacturers and to the sellers, and the state of competition generally in the industry.

Trial Examiner Norwood: My previous ruling operates to reject that from this witness at this time.
5623 So much of it as is relevant has been covered by the preceding witnesses.

Mr. Austin: May we go off the record a minute?

Trial Examiner Norwood: Yes. Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

Mr. Robison: May it be understood, Mr. Examiner, that your ruling involves the proposition that the subject matter is beyond controversy and that there is to be no controversial evidence with respect to it admitted?

Trial Examiner Norwood: I think evidence, such of that as is relevant and material, has already been covered.

Mr. Robison: True, but as I understand, when you exclude evidence or testimony on the ground it is cumulative it necessarily involves the proposition that there can be no question of weight of evidence concerning it arising out of the calling of witnesses who may testify to the contrary.

Mr. MacIntyre: I do not agree to that under the circumstances here.

Mr. Gilpatric: I want to add to my offer of proof this statement, that it would be the testimony, which I would hope to elicit by these questions from economic witnesses, that where such order or decision is rendered the inevitable result would be a uniform f.o.b. mill price system.

Trial Examiner Norwood: I shall reject that be-
5624 cause the counsel has already covered that point by two witnesses. Proceed.

By Mr. Gilpatric:

Q. Professor Wernette, in order to have a truly competitive market, is it, in your opinion, necessary that prices should change with any specifiable frequency?

A. No, it is not. It is not necessary that prices should change with any specifiable frequency.

Q. Under the conditions assumed in hypothetical question A, as an economist, would you expect the price of conduit to fluctuate at frequent intervals, or to be stable over a considerable period of time?

A. Well, I should expect it to be stable over periods of time.

And I should also like to go on record as objecting to the proposition that the only truly competitive prices are those that fluctuate a good deal, daily or otherwise.

Q. Under the conditions assumed in hypothetical question A, does the practice of conduit sellers referred to in those conditions of protecting building contractors on price have any bearing on the frequency with which you would expect conduit prices to fluctuate?

A. Yes, it does. If they reduce their prices, they have to protect their dealers by reducing the prices on contracts and stocks which are outstanding, which is a costly procedure to the sellers, and therefore would tend to
5625 impel them against frequent reductions of prices.

Q. Under those assumed conditions, does this practice of protecting contractors on price appear to you, as an economist, to be competitive or non-competitive?

A. It is competitive, definitely.

Q. In paragraph 21 of the statement of facts of hypothetical question A, there is a reference to the fact that during the last eight years there have been as many as fifteen changes in the quotations of conduit prices published by various conduit manufacturers, the periods of time between the dates of such changes varying from less than a month to approximately a year and a half.

On the basis of those assumed facts, does this indicate to you, as an economist, an absence of competition?

A. No, it does not indicate an absence of competition.

The question seems to imply that frequent fluctuations, as, for instance, in the wheat market in Chicago, signal a truly competitive situation, and I do not believe this to be true.

Q. In a given market what degree of similarity would you expect to find in the prices quoted by competitors for a manufactured product of standard specifications?

Mr. MacIntyre: I object to that. It does not call for a statement of economic theory.

5626 Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Gilpatric: If Your Honor please, that rule has been referred to so often it is practically axiomatic. I simply want to see if this witness subscribes to it or not. It certainly is a question of economic theory.

Trial Examiner Norwood: Read it again.

Mr. MacIntyre: He is asking him to subscribe to a particular situation, not to a statement of a rule.

Mr. Gilpatric: This is a general question.

Trial Examiner Norwood: Read it.

(Question again read.)

Trial Examiner Norwood: Through the operation of economic forces, you mean?

Mr. Gilpatric: Yes. Yes, I do. That is exactly what I mean.

Trial Examiner Norwood: Let him answer.

A. I should expect to find them quoting identical prices.

By Mr. Gilpatric:

Q. Why?

A. Well. any seller who quotes a higher price than the others will get no business, and if he is serious about competing, he has to sell as low as the others are selling at; and if any cuts, therefore, those who are serious about remaining in the market have to come down to the
5627 lower price also, so that all who are really serious in trying to compete in the market I would expect to find quoting the same price.

Q. Professor, will you tell us whether or not in a competitive market you, as an economist, would expect the seller of a product such as rigid conduit to be raising or lowering his price quotation each time that an attempt is made to effect a sale?

A. I would not expect it.

Q. Why not?

A. Well, no more than, to use a homely example, I would expect a grocery storekeeper to change the price of canned peaches every time a housewife proposed to buy some.

This medieval or oriental technique of bargaining on every sale has been pretty thoroughly abandoned in this country in favor of having a quoted price and sticking to it as being more efficient and on the whole more satisfactory to both buyers and sellers.

Q. In your opinion as an economist, what would be

likely to cause a change in the price quotation for a standard product such as rigid conduit?

A. Well, there are several factors. A change in costs of production or change in demand conditions would be likely to be the most important; and, furthermore, those changes would have to be expected, I think, by the sellers to be of a fairly long duration, and not be briefly temporary.

5628 Q. Is it common for economists to differentiate between long range tendencies and short run fluctuations?

A. Oh, yes, indeed.

Q. Do long range tendencies manifest themselves under competitive conditions?

A. Yes, indeed.

Q. In your opinion as an economist, under competitive conditions, can adjustments to long-range tendencies in price be made without short-run fluctuations?

Mr. MacIntyre: I object to that. It does not call for a matter of economic theory. It calls for incompetent speculation.

Trial Examiner Norwood: Objection overruled.

A. Why, yes, of course it may be, and indeed that is what I was implying a moment ago, that people who make prices do not change their prices if changes occur which they expect to be briefly temporary. There has been no change in their expectation of the long-range outlook.

By Mr. Gilpatric:

Q. On the basis of the conditions in the rigid conduit industry assumed in hypothetical question A, in your opinion, is that industry one in which logically price adjustments might take place from a long-range standpoint without short-run fluctuations?

A. Yes, I should expect so.

5629 Trial Examiner Norwood: I think we will recess till 10 o'clock tomorrow morning.

Recess till 10 o'clock tomorrow morning.

(Whereupon, at 4:15 o'clock p. m., February 18, 1942, the hearing in the above-entitled matter was adjourned.)

5631 Proceedings.

Trial Examiner Norwood: Hearing come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is now reconvened in Room 532, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., Eastern War Time, February 18, 1942.

Please note the appearances.

Professor J. Philip Wernette will please resume the stand for further examination.

J. PHILIP WERNETTE resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Gilpatric.

Q. Professor Wernette, do you consider that marketing is a branch of economics?

A. A rather neglected branch, but it is a branch.

Q. Am I correct in understanding that marketing is one of the principal subjects in which you have specialized?

A. That is right.

Q. In your opinion as a student of marketing, under the conditions assumed in hypothetical question A, would it be sound marketing procedure for a manufacturing company to instruct its salesmen to quote the same price f.o.b. its manufacturing plant?

5633 A. It would not be a sound marketing procedure if the selling company wished to secure maximum diversification of marketing—of markets, for such a procedure would limit the areas in which it could make sales.

By Mr. Gilpatric:

Q. Based on your studies in marketing, what alternative method of quoting prices would you expect to find in those conditions?

Mr. MacIntyre: I object to that.

Trial Examiner Norwood: Objection overruled.

A. I would expect to find the seller quoting a system of delivered prices according to some sort of schedule.

By Mr. Gilpatric:

Q. In your opinion as a student of marketing, if a manufacturer were using such a schedule of delivered

prices, would those prices necessarily be set so as to yield the same mill net returns?

Mr. MacIntyre: I object. It calls for not a state-
5634 ment of economic theory, but of speculation, a state of psychology.

Trial Examiner Norwood: Read that.

(Question read.)

Trial Examiner Norwood: Objection overruled. Answer the question.

A. No, they would not be set so as to yield the same mill net returns. Indeed, they could not be and achieve the end which is sought, namely, maximum market diversification.

By Mr. Gilpatric:

Q. Based on your studies in this field of marketing, what is your opinion as to whether a conduit manufacturer, under the conditions assumed in hypothetical question A, quoting a uniform f.o.b. mill price, could achieve stability in sales and manufacturing operations, despite fluctuations in the demand in the several markets, by merely taking business from whatever markets in which there was temporarily a large demand and switching to others when the demand changed?

Mr. MacIntyre: I object to that question. It does not call for any statement of economic theory, but a speculation as to what would occur if something else occurred in the future, which is not before us, and it calls for testimony on an irrelevant and immaterial matter.

Trial Examiner Norwood: Read the question.

(Question read.)

5635 Mr. Gilpatric: Mr. Examiner, that is— Could I be heard?

Trial Examiner Norwood: Can't this expert tell us about this without being led so?

Mr. Gilpatric: Well, I didn't intend to lead him, Your Honor. I am asking his opinion under certain facts which have been suggested in some of the cross-examination of other witnesses by Mr. MacIntyre.

Trial Examiner Norwood: Objection overruled. Answer the question.

Mr. MacIntyre: How did that arise?

Trial Examiner Norwood: Answer the question.

A. It would be very difficult, and it might be impossible. The proposition that he could do so under a system of

uniform f.o.b. prices is suggestive of a line of reasoning encountered in much neo-classical economic analysis, which analysis completely neglected the marketing of commodities and which supposed that a producer had but to produce a commodity and offer it for sale to find buyers for his entire output.

Now, this condition may prevail with respect to some commodities, but, as is well known, it does not prevail with respect to most manufactured commodities, and I gather from hypothetical question A it does not prevail with respect to rigid steel conduit. A seller cannot wait for buyers to come to him or establish contact with him.
5636 He must have a sales force and a dealer organization in order to be an effective competitor.

Now, this sales force and dealer organization can hardly be fabricated ad hoc and temporarily in a market where demand springs up and then when the demand goes down there and it comes up somewhere else transferred to this other place. The establishment of sales relations with dealers and contractors is not an easy matter; and if it were thought that this operation was just going to be temporary on the part of the seller, it would probably be almost impossible.

By Mr. Gilpatric:

Q. In your opinion, based on your studies and teaching in the field of marketing, does the basing-point method of calculating prices facilitate the transfer of part of a manufacturer's sales from one market to another as market conditions change?

Mr. MacIntyre: I object to that on the ground that I objected to the previous question, and on the further ground that it is as leading as the other one was.

Trial Examiner Norwood: Overruled.

A. Yes, it does. The basing point—the use of the basing-point method operates to keep—no. To permit a manufacturer to be in more markets simultaneously than he could under a uniform f.o.b. system, and to stay in those markets with his salesmen and dealer contacts making some sales even when the demand in such
5637 markets goes down. His contacts are maintained and when the demand revives it is therefore easy for him to make sales in that market and thus to transfer his—thus the more readily to transfer his sales from one market to another as conditions change.

5638 Q. Will you give us your opinion, Professor, from a marketing standpoint, whether a manufacturer could maintain continuous contact with as many markets if he were quoting prices on his product on a uniform f.o.b. basis?

A. No, he could not. The freight costs would necessarily limit the manufacturer to a smaller market area.

Trial Examiner Norwood: Off the record there.

(Discussion off the record.)

Trial Examiner Norwood: Proceed.

5639 Well, now, off the record.

(Further discussion off the record.)

Trial Examiner Norwood: Proceed.

By Mr. Gilpatric:

Q. Professor Wernette, assume that each conduit manufacturer generally refrains from quoting f.o.b. factory prices that are independent of and unrelated to delivered price quotations determined from a basing-point formula. To you as a student of marketing would the fact that he so refrains indicate any absence of competition?

A. No, it would not.

Q. From your observation of marketing practices, to what would you attribute the conduct of a conduit manufacturing company in so refraining?

A. Well, I would attribute it to the fact that he did not consider that method of quoting prices to be for him a sound and business-like procedure and that he considered that some other method was more appropriate for his use in bringing him some advantages. I classify it as a kind of business decision which the operator makes in the light of whatever study he gives the facts.

Q. Tell us your opinion as to whether or not the quotation of the same prices by several sellers results from the independent action of the sellers.

Mr. MacIntyre: I object. It calls for incompetent 5640 testimony. This witness cannot answer that.

Trial Examiner Norwood: Objection sustained.

Mr. Gilpatric: I was simply taking a suggestion from Your Honor yesterday that we suggest one possible inference from a state of facts. I am not attempting to prove by this man that that is the only inference.

Trial Examiner Norwood: Counsel, perhaps I did not hear your question accurately.

Read it.

(Question read as follows:

"Q. Tell us your opinion as to whether or not the quotation of the same prices by several sellers results—")

Mr. Gilpatric: Can result.

(Question read further as follows:

"Q. —can result from the independent action of the sellers.")

Mr. MacIntyre: That is a different question now.

Trial Examiner Norwood: Well, the question as corrected may be answered, and the objection withdrawn.

Answer the question.

A. Well, the answer is yes, certainly it can result from the independent action of sellers.

If I may be allowed to expand on that just slightly, I should like to suggest that many commodities may be
5641 found in a category for which I think there is no generally accepted name, but which I call continuously quoted commodities, in the sense that they are commodities of a specified nature, always on sale, and for which a seller has a continuously available price, known to customers, and known doubtless to his competitors.

A simple homely example that to me is a perfect representative one is the shelves of a grocery store with the goods standing there with price tags on them.

Now, a continuously quoted price is one which is known to competitors, and which they can meet or not meet, as they wish, and the notion that they are not competing if they merely quote equal prices I think is based on a mistaken analogy, namely, the analogy of an auction or an underbidding contest, or perhaps even on the kind of analogy represented by a non-continuously quoted commodity, such as a contract to build a man's house. A house is not some thing that is continuously quoted. You plan to build a house, and you may invite bids from various contractors. That all of these contractors, or that more than one should hit on exactly the same bid would to me seem strange. But in the case of a continuously quoted commodity, where each seller's price is known to many persons, presumably including all of his competitors, the fact that they are all quoting the same price seems to me to be entirely consistent with competition.

5642 By Mr. Gilpatric:

Q. Now, Professor Wernette, I will ask you this question:

As a result of your studies in the field of marketing, what is your opinion as to whether the sale of merchandise at a delivered price other than by the use of the basing-point method may or may not involve the absorption of freight by the seller?

A. Yes, the sale of merchandise by methods other than the basing-point method may result in freight absorption.

Q. What have you found in your marketing studies to be the considerations which would lead a manufacturer to sell merchandise at a delivered price and absorb freight?

A. Well, there are a good many, but I suppose the principal one is his desire to get into distant markets that he could not enter or could enter only with difficulty if he could do so.

Q. Tell us your opinion as to whether or not the practice of absorbing freight when methods of pricing other than the basing-point method are used are similar in any respect to the use of the basing-point method.

A. Yes, they are similar in the respect that they result in varying mill nets for the seller.

Q. Is there any recognized principle with which you are familiar as the result of your studies of marketing under which any price advantage accrues to nearby custo-
5643 mers of a manufacturer by reason of the proximity of those customers to the point of production?

A. No, I think there is no such recognized principle. It sometimes accrues to the buyer and sometimes to the seller.

Q. Have you in mind any examples based on your observation of marketing practices in which the advantages of location have accrued to sellers?

A. Well, again, a simple and homely example would be milk and dairy products. The producers located close to large metropolitan centers get the advantage of the location. It does not accrue to the consumers in the large metropolitan centers.

Trial Examiner Norwood: Why is that in the case of milk?

The Witness: Well, because the large metropolitan center drawing milk from a milk shed draws it in from varying distances, and presumably the most expensive,—the highest freight charges, of course, have to be covered by the price of milk in the metropolitan center, and the producer located close to the metropolitan center, where the high freight charges do not have to be paid, does not sell his milk for any less and he gets a higher price at his farm.

Trial Examiner Norwood: That is brought about naturally by the inadequacy of the nearby demand—nearby supply, is it?

5644 The Witness: That is right.

Trial Examiner Norwood: Where would be the basis of that price? Would it be an average? Would it be based on the farthest substantial supply—factor of supply?

The Witness: Well, sir, a fair answer to that question would be rather complicated, but I think I can make an honest brief answer in saying that it would be determined by the highest marginal cost, and one factor in making such marginal cost higher than intramarginal cost would be the higher freight rates of the necessary more distant suppliers.

By Mr. Gilpatric:

Q. If a concern were contemplating the construction of a new manufacturing plant, what marketing considerations would you expect the officers of that concern to take into account in determining where to locate the plant?

A. The present and their estimate of the future demand and competitive supply with respect to the several possible locations.

Q. If in that situation the choice of location were made near to a large market, would the savings in transportation costs, in your opinion as a student of marketing, necessarily accrue to the customers in that market?

A. No, it would not necessarily. Here again, as the Examiner's question brought out a moment ago, it might or it might not, depending on the supply and demand con-

5645 ditions in that market.

Q. As an economist, if there were several sellers at a particular market, would you expect the price quotations of those sellers to vary to the extent that their costs differ?

A. No, I would not; not at least of any sellers who are seriously intending to compete in such a market.

Once again we encounter the principle of price matching. Any seller who quotes higher than the going prices will probably make no sales, and any who quotes lower will attract his competitors' prices downward, so that the upshot will be likely to be that all who are competing seriously are quoting the same price.

Q. If there are several sellers in such a market and their price quotations do not vary to the extent that their

costs differ, what is your opinion as to whether or not there is lack of competition?

Mr. MacIntyre: I object. Without knowing what the facts are it would be incompetent for anyone to answer that question. A situation of that kind could be brought about by any one of a hundred different things—

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: —including monopoly, competition.

(Question read.)

Mr. Gilpatric: I would like to confine that question to standardized or homogeneous products.

5646 Trial Examiner Norwood: Objection overruled.

A. Why, no, that condition would in no respect indicate an absence of competition. It is a very common competitive situation that sellers having different costs are quoting the same price. It is, if you like the misfortune of the high cost producers that they can't get a higher price, but they can't.

By Mr. Gilpatric:

Q. If several producers of similar commodities, similar standardized commodities, having different costs, were found to be quoting and selling at the same price, give us your opinion whether or not that would necessarily indicate either a miraculous agreement on what is good policy amongst them or the use of some means of working out a uniform plan of quoting the same price.

A. No, it would not indicate either of these things.

Trial Examiner Norwood: In reference to that previous question there, I wanted to ask you one thing.

Where there are high-cost producers and low-cost producers, would the low-cost producers be the price leaders there, naturally, according to the natural operation of economic law, or would it in some way involve volume?

The Witness: Well, sir, subject perhaps to some further explanation as to just what you have in mind, I think I should have to reply that economic reasoning does not,

5647 I think, suggest that it would necessarily be either; that it might be either the high or the low-cost producers, depending I think on the volume position. He with large volume is likely to be the price leader, I think, perhaps whether his costs are high or low.

By Mr. Gilpatric:

Q. Professor, referring to the assumptions stated in my last question, that is, the assumption of several producers

of similar homogeneous commodities with different costs found to be quoting and selling at the same price, give us your opinion whether or not such producers might be in active competition.

A. Yes, of course they might be in active competition.

Q. If, on the other hand, such sellers were found to be offering their products for sale in a given market at different prices, would that indicate to you a competitive situation or a non-competitive situation?

A. Well, it might be either. Agreements to charge different prices are not unheard of phenomena, producing a non-competitive division of markets. Certainly those who are quoting the higher prices would not be very effective competitors.

Q. Well, approaching it another way, if the price quotations of these various sellers do not vary to the extent of their differences of cost, tell us whether or not that indicates to you the presence or the absence of competition.

5648 A. Well, again, I think it might be either. But that they do not vary with their costs is entirely consistent with competition. Indeed, that is the situation encountered where they have different costs and are quoting the same price.

Q. What is your opinion as to whether a purchaser may expect normally that the delivered cost to him as quoted on future sales or for future sales by a number of sellers located at different places variously freightwise from his destination will be identical or uniform as to all sellers quoting?

A. Well, they would not necessarily be identical or uniform for all sellers, but they would, I think, for all sellers who were seriously trying to get the business. Anybody who quoted a higher price and offered the buyer as an explanation that he was farther away, and, therefore, his freight costs are higher, would encounter a polite indifference, I think, on the part of the buyer. That does not mean anything to him. All the sellers that are really competing for his business will have to match the lowest offer, whether their costs are higher or not.

Mr. MacIntyre: I move to strike the last part of the witness' answer, particularly that part which states what a buyer would do.

Trial Examiner Norwood: Objection overruled.

By Mr. Gilpatric:

Q. Professor Wernette,—

5649 Trial Examiner Norwood: Suppose, on the condition there that was just assumed, that on the part of the sellers, there being degrees of desire for the business or necessity for getting the business, would that be reflected in any way in this—in the figures they bid?

The Witness: Well, it is conceivable that it might, but then we encounter this difficulty, and that is that these are continuously quoted commodities for future delivery, and I might say if you, sir, were the necessitous seller, would a price cut get you the business which you desire? Now, unless that price cut could proceed unbeknownst to your competitors or unless they didn't meet the price cut and simply allowed you to have the business—

Trial Examiner Norwood: Suppose it was a sealed bid?

The Witness: Well, with respect to a sealed bid, again, in connection with a continuously quoted commodity if you underbid the going market price they would become aware of it and might indeed ask for an opportunity to rebid, a not uncommon procedure in industrial buying.

Trial Examiner Norwood: You mean because somebody had underbid the crowd?

The Witness: Yes. In industrial purchasing it is a fairly common phenomena for sellers to ask for an opportunity to revise their bids, the industrial buyer not being gov-

5650 erned by any statutory regulation that he must accept the lowest bid on the initial opening, it being a matter of price—of purchasing price policy with the industrial buyer as to whether or not he will allow rebidding. They do.

By Mr. Gilpatric:

Q. If you were to assume that a seller makes a practice of accepting from his various customers different sums of money per unit for a standardized product, and if there were no differences in the quality or the cost of selling involved, on what economic theory can the practice of the seller be explained?

A. Well, I suppose the simplest explanation is that he has to meet competition of varying intensity with respect to some of these sellers. Competition in some cases forces him to quote lower prices than in others.

Mr. Gilpatric: That completes the direct examination.

Trial Examiner Norwood: Cross-examination.

Cross-Examination by Mr. MacIntyre.

Q. In your answer to that last question, Professor, you assumed that there was competition and there was real effort to meet somebody's competition present; is that correct?

A. Yes, it is.

Q. In fact, you were assuming that there was real
5651 competition effective on the part of all sellers in such situation; is that correct, and that each was trying to meet the competition of the other?

A. No. I think that assumption runs beyond what I had in mind or needed to have in mind.

Q. Is it your testimony that it is a part of the body of generally accepted and recognized economic theory that two or more sellers located at point A will habitually and systematically accept higher mill nets from their nearby customers and lower mill nets from other customers of theirs in territory which I shall designate point B, where there are other sellers, two or more, who simultaneously accept higher mill nets—that is, simultaneously habitually and systematically accept higher mill nets from their nearby customers, while accepting lower mill nets from customers located in the vicinity of point A, and in doing so they are quoting the same identical delivered price quotations in the vicinity of point A as are quoted by the producers located at point A, and all of the delivered price quotations which result in the differences in mill nets at—by the producers at point A are the same as quoted at location point B by all who quote there?

Mr. MacIntyre: Now, read the question, the opening of the question.

Trial Examiner Norwood: Read it.

(Question read.)

5652 Trial Examiner Norwood: Can you answer that?

The Witness: Well, I am not quite sure if I understand the question, but I shall try to answer it, and if you find I am not coping with the conditioning clauses, it is subject to correction. But before I begin the answer, if I may say so, I should like to make two observations. You asked me about generally accepted and recognized economic theory.

By Mr. MacIntyre:

Q. Generally recognized and accepted economic theory.

A. Yes. I am not sure that I, or any other economist, is truly competent to answer any such question, for there is no clearly defined generally accepted and recognized body of economic theory. I say that in all sincerity and not as an attempt to dodge your question.

Then, secondly, I should like to say that there are many propositions that have wide acceptance among economists, if one may judge from the books and articles written by them, and might, therefore, perhaps be said to qualify as accepted economic theory, which I do not believe to be true. Economics in the hands of some writers has degenerated into a kind of metaphysical performance of—well, diagram drawing, which is quite unrelated to reality, which is over simplified and—well, as Josh Billings said, "It ain't the things you don't know that hurt you. It is the things you know that ain't so."

Now, a great deal of what is written in fat books
5653 on economics, and which economists generally say, I do not believe to be true, and—well, I don't know that you would believe that I would be making this up for this occasion, but the forthcoming issue of the American Economic Review Supplement will find me saying the same things before the American Economic Association last December.

Mr. Gilpatric: If Your Honor please, excuse me a few minutes. I have a telephone call I would like to make.

Trial Examiner Norwood: Finish your answer to this question. Can you wait that long?

Mr. Gilpatric: All right.

A. (Continuing.) Now, to address myself to the question, as I understand it, with their habitual inclination to over-simplification, I don't think that most economic writers have given very much attention to this question. Economic analysis is run pretty much in terms of what it is now fashionable, I believe, to call pure competition, which is a very greatly oversimplified line of reasoning. And most economic writers do not recognize what I call—find convenient to call the principle of discontinuity as it actually appears in real economic life as distinguished from oversimplified reasoning.

Now, this matter of unequal mill nets in its position in economic analysis hasn't received very much attention,

and I should like to suggest that, contrary to a widespread impression that equal mill nets are the normal con-
5654 dition, that non-equal seller's realization is a widespread phenomena of which unequal mill nets is only a special case.

Now, if I may illustrate with a couple of simple examples, any case in which there is a lack of parallelism between price and cost represents a case of unequal realization, and that may flow from any one of a number of reasons. One housewife buys a pair of silk stockings for 69 cents and carries it out of the store. The next one buys it for 69 cents and asks to have it delivered—unequal realization. One man comes in and buys a suit, a 44. He gets it for the same price as another man gets a 36—unequal realization. One man gets a suit fit perfectly; walks out of the store with it. Another buyer has to have alterations—unequal realization. One life insurance buyer is easy to sell, is sold on the first call by the salesman; another is hard to sell, takes a number of calls—unequal realization.

My prize Exhibit A, Mr. Examiner, is missing this morning. Mr. Robison is not here. He goes to the barber shop and pays 50 cents for a hair cut, same as I do, but the barber has less work with him—unequal realization.

Trial Examiner Norwood: That would apply to Edgar Bergen also?

The Witness: Yes. Yes. Now, what I am saying, therefore, is two things: First, that this matter of unequal realization is not generally recognized, I think, in economic
5655 writings because the economic writings are so much oversimplified and are based in a large part upon a model of commodity conditions which, in fact, is rare if it is existent at all; and the other, the substantial fact, apart from what the economists say, that unequal seller realization is a widespread phenomena in economic life and isn't limited to the operation of the basing-point system or of freight absorption or of anything else. It is just a widespread phenomena in all kinds of industry in which we wouldn't think for a moment of claiming that there was no competition going on.

Trial Examiner Norwood: We will have a five minutes' recess—ten minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Do you want us to understand from the last answer that you gave that the answers which you gave to the questions propounded to you by Mr. Gilpatric are based principally upon your observations as to how business is carried on in a number of industries in this country, as distinguished from how economists, you might say classical economists, have stated that, theoretically, it would be expected to be carried on?

A. Well, I don't know that I would say principally. It is based on a study of the writings of prominent economists as modified by some contact with business prob-
5656 lems, and particularly the business problems which we use in our teaching work at the Harvard Business School, and, if I may say so, by my own thinking about these writings and problems.

Q. And about how these business problems are solved in present day life?

A. Yes, I think that would be right.

Q. Have you in that connection had the opportunity of observing how the business problems of steel manufacturers, cement manufacturers, rigid steel conduit manufacturers, sugar refining operators, have been met?

A. Well, I think I have no particular specific knowledge about any of them except the rigid steel conduit manufacturers.

Q. But this knowledge of present-day busines practice, general knowledge of present-day business practice, would include—that is, of yours, would include observations of the way that the business men in these industries that I have just mentioned have met their problems; is that correct?

A. Sugar,—

Q. Sugar refining.

A. —no. Cement, no.

Q. Steel conduit?

A. Steel conduit, in so far as information has been supplied to me in this hypothetical question A.

Q. And have you in any of your answers relied
5657 upon any knowledge of that industry, other than what was assumed to be the facts in the hypothetical questions which were put to you by Mr. Gilpatric?

A. No, I believe not. I don't know any other facts.

Q. In other words, you relied solely upon those assumed facts—

A. Yes, sir.
Q. —in answering those questions?
A. So far as the answer—
Q. Related to rigid steel conduit?
A. Yes, sir.
Q. How long have you known that you were to testify in this case?
A. Since about November 1st.
Q. You were employed about that time by counsel for the Respondents to testify?
A. Yes.
Q. And they paid you for giving your testimony here, have they, or promised to pay you?
A. Yes, they have done both.
Q. And have they, since they first—since you first came to know that you were to testify in this case, presented to you for your study any of the documentary evidence which is in the record in this case?
A. Would it be appropriate for me to ask just
5658 what is meant by documentary evidence?
A. The telegrams, letters, in the form of communications which have passed from one conduit manufacturer to another and from one of them to their agents or the other.
A. No; they have shown me none of such material.
Q. If it should be found from the entire record in this case, including such evidence, that the practices used by rigid steel conduit manufacturers and their agents and conditions thereby brought about have been adopted and used through collusion or agreements, would that affect the answers which you have given to Mr. Gilpatric to the effect that you considered or it was your opinion that the condition which he posed to you in his hypothetical question A was competitive?
Would you care to have that question read?
A. No. I think I understand it.
Well, have I testified that—
Mr. MacIntyre: No. Let us read the question. I don't believe you got it if that is your thought.
(Question read.)
Mr. Gilpatric: I object to that, Your Honor. The only question addressed to Mr. Wernette on the basis of the hypothetical question was whether or not the method of pricing could be consistent with competition.

Trial Examiner Norwood: Yes.

I shall ask this witness to answer that from the
5659 standpoint of whether or not these matters related by the counsel for the Commission had come to his knowledge, would that have changed his answer.

Mr. MacIntyre: Well, I assume that if it be found by him.

Trial Examiner Norwood: Yes, from the entire record. He may answer that.

The Witness: Excuse me. May I ask if I had found it prior to yesterday? Is that—

Trial Examiner Norwood: Well, if you had just included those facts in the hypotheses—

The Witness: Yes.

Trial Examiner Norwood: —would your answers be the same?

I think that states the substance of it.

Mr. MacIntyre: Yes.

A. Some of them would be, for there are some of these situations where you say is it consistent with competition, and my answer is yes; and if the question had been is it consistent with collusion, the answer would also be yes.

Offhand, I can't quite be sure whether throughout all of my questions—whether that would be true of every single answer, but I might say if I knew that I would not be here.

5660 By Mr. MacIntyre:

Q. But you would still say that this practice and condition which was outlined to you by Mr. Gilpatric in his hypothetical question A is expressive of competition even if you knew that collusion, agreements, or understandings were involved in the adoption of the practice which resulted in the condition or in the use of the practices which are tied in with the condition; is that correct?

The Witness: May I have that question read again?

Trial Examiner Norwood: Read it.

(Question read.)

A. No, it is not correct.

Trial Examiner Norwood: Off the record just a minute.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead, back on the record.

By Mr. MacIntyre:

Q. Well, if we assume, as I did in my last question to you, the presence and use of collusion, understandings or agreements among sellers of rigid steel conduit, would you still say that the conditions posed—that is, the practices and conditions posed by Mr. Gilpatric in his hypothetical question A are consistent with competition?

Trial Examiner Norwood: You want him to base
5661 his answer on the original hypothesis or the original hypothesis as amended there by your additional—

Mr. MacIntyre: If we assume the condition of collusion, understandings, agreements as an addition to the hypothetical question A, would he still say that the condition as amended presents one to him as being consistent with competition.

Trial Examiner Norwood: Answer that.

Mr. Gilpatric: Hasn't that question been answered in response to Your Honor's question?

Trial Examiner Norwood: He can answer it.

Answer it.

A. May I ask if by "conditions" you mean any and all possible conditions which have been discussed as being—

Q. Take all of the conditions that were outlined to you by Mr. Gilpatric in his hypothetical question A and amend it or modify it in so far as it is necessary to also assume that these sellers of rigid steel conduit who are referred to therein have engaged in collusion, understanding, or agreements in adopting and carrying out the practices referred to in that hypothetical question A. Then I ask you is the total of that one which you say is consistent with competition?

A. I would think not. Indeed, I would suppose that the assumption carries its own answer; that if I
5662 am asked to assume that collusion prevails, I cannot well conclude that competition prevails.

Q. And if instead of assuming collusion I assumed in the question that competition prevails, you would have no difficulty then of stating what the condition thus posed was one consistent with competition, would you?

A. I think I would be bound so to reply by the assumption.

Q. Yes.

Do you as an economist testify that it is not important

in appraising a statement of facts to inquire as to whether or not there is collusion involved in order to state whether or not the condition is one which involves collusion or competition?

A. Well, have I been asked at any time to testify whether it involves collusion or competition? Have I not been asked, rather, whether this condition is consistent with the existence of competition? That has been my impression, for I think I could not pretend to assert that competition in fact exists.

Q. You do not want any answer that you have given here to be taken to mean that in your opinion competition exists in the rigid steel conduit industry; is that correct?

The Witness: May I have that read again?

Trial Examiner Norwood: Read it.

(Question read.)

5663 A. No, it is not correct, for it is my opinion that competition exists; but I offer that only as an opinion and not as conclusive economic evidence.

By Mr. MacIntyre:

Q. Are you willing to express that as your opinion without examining evidence which is available to you as a part of the record in this case and which would present facts which might bear upon the question of whether collusion is present?

A. Not if it devolved upon me to make a considered answer to that question, which I think it does not. I give you that as my opinion as of the moment. If I were asked to make a considered answer to the question, then my today's opinion would have to be—

Q. Modified if the evidence would modify it; is that correct?

A. Well, would simply have to be set aside subject to further investigation.

Q. Is it your testimony that in a true market supply and demand factors peculiar to that market do not express themselves in the price prevailing in the market?

A. Might I ask, without being pedantic, what you mean by "true market"?

Q. One that is fully competitive in the economic sense.

The Witness: May I have the question read?

Trial Examiner Norwood: Read it.

(Question read.)

5664 A. Again, without meaning to be splitting hairs, would it be appropriate for me to ask what you mean by "express themselves"?

Q. Well, by evidencing themselves in the price at which the good is offered for sale in the market.

A. Well, I am sorry, I am not sure if I quite understand the question, but I will make a tentative answer yes.

Q. That is, it is your testimony that supply and demand factors peculiar to a market do not express themselves in the price prevailing in the market?

A. If by that you mean that the price changes every time some supply or demand factor changes—may I correct that?—that the price does not change every time some supply or demand factor changes, that is entirely consistent with a truly competitive market.

Trial Examiner Norwood: Well, do the conditions ever enter into the result of price making?

The Witness: I am sorry; I do not think I quite got that.

Trial Examiner Norwood: The market conditions he has referred to, do they ever enter into the result of price making? Do they ever affect a price—

The Witness: Oh, yes.

Trial Examiner Norwood: —one way or the other?

The Witness: Oh, yes, of course. These conditions
5665 plainly are among the basic conditions in the determination of a price.

By Mr. MacIntyre:

Q. Is it your testimony that economic theory is not to the effect that supply and demand factors peculiar to a market determine the level of the price in that market?

Mr. MacIntyre: Perhaps the question should be read.

(Question read.)

A. Subject again to the same qualification that I do not know for sure what economic theory says, I will say that supply and demand factors are basic to and are among the factors determining the price. Broadly interpreted, they include everything. The trouble is with some haziness as to what supply and demand factors mean. They are rather uncertain terms. But every change in the factors is not necessarily accompanied by a change in the price.

Q. Generally they determine the price that is peculiar to that market.

A. Yes.

Q. Is that correct?
A. That is right.
If I may say so, perhaps off the record—
Trial Examiner Norwood: Off the record.
(Discussion off the record.)
Trial Examiner Norwood: Go ahead.

5666 By Mr. MacIntyre:

Q. This principle of indifference to which you made reference on your direct examination is a principle from the body of economic theory that is not peculiar to any present-day life, but it is one of long standing; is that correct?

A. Yes, I believe that is right.

Q. And that also applies to the statement of the principle concerning the uniformity of price in a market; is that correct?

A. Well, I am not quite sure what that last principle is, but I shall make a tentative answer "yes" to that one also.

Q. Do you know of any real reasons as to why the principle of indifference and the principle of uniformity of price in a market as originally propounded should be modified?

A. No, I think not. Where they apply they apply. If in fact buyers and sellers are indifferent to whom they sell and from whom they purchase, then the principle applies; if they are not, then the principle of indifference does not apply.

Q. And those two principles apply with equal force to buyers as well as to sellers; is that correct?

A. Yes.

Q. Is it your testimony that a commodity is homogeneous in the sense in which you used that term on your direct examination if there are sufficient differences in
5667 quality on the part of the commodity as offered by one manufacturer as distinguished from the commodity offered by another manufacturer such as would lead buyers to prefer the one over the other at the same price and under the same conditions if they were informed of those differences and knew about them?

Mr. Gilpatric: May I have that question read, Your Honor?
Trial Examiner Norwood: Read it.
(Question read.)

A. If the preference were so small that they would not be willing to pay any higher price to one seller than to another, I should say that, despite such differences, substantial homogeneity existed. And I should also like to add—it may or may not be relevant—that the preference for one seller over another may depend on factors having to do with the seller rather than the commodity.

By Mr. MacIntyre:

Q. It would not change the homogeneity of the product?

A. No, sir.

Q. But if the differences in the product are sufficient, if made known to the buyers and stressed, which lead them to pay differences in price, you would not class that as a homogeneous article?

A. No, sir.

Q. Do you as an economist recognize the operations in the wheat market as operations in a truly competitive market?

5668

The Witness: As long as I have been asked this question, I wonder again if I might be excused to talk—permitted to talk for just a minute or two about competition?

Trial Examiner Norwood: Well, if you will answer the question, then you will have ample opportunity to explain it later. Your counsel will be permitted to do that.

A. Yes, it is a truly competitive market.

The Witness: May I go on with some explanation, then?

Mr. MacIntyre: Well, I would think that if the counsel for the Respondents would care for any further explanations of that—

Trial Examiner Norwood: If you want to explain any terms there you may do so.

The Witness: No.

It is truly competitive, so far as I know.

By Mr. MacIntyre:

Q. That is, in your opinion as an economist, it is a truly competitive market?

A. Yes. But it is not, I think, to be taken as the ideal sort of, or the only kind of, truly competitive market.

Q. If you found all sellers and prospective sellers in a market submitting bids in the form of price quotations which not only tend to become uniform and identical but which have in fact become absolutely identical as to the amount quoted and remained so at rigid levels

5669

for periods of from one month to one year or more without change, would you testify as an economist that in your opinion that the condition is explained under the principle of uniformity of price as that principle is included in the body of economic theory?

A. The principle of—

Mr. MacIntyre: Read the first part of the question.

Trial Examiner Norwood: Read it.

The Witness: I have it clear, I think.

A. The principle of uniformity of price would not explain the absence of change in the price over a period of time, since it has nothing to do with that. It merely refers to the uniformity of price in a given market at any given moment. With respect to the quoting at any given time by several sellers of the same price, that is the principle of uniformity of price,—with respect, I should like to add, to continuously quoted commodities.

By Mr. MacIntyre:

Q. Well, in applying this principle of uniformity of price in a market to this grain market in Chicago, would it be applied to the prices at which grain exchanges hands, or contracts for grain exchange hands there, or on the bid and ask offers which are made during the period of time that transactions are taking place?

5670 I want you to answer that question from the way that economists in general regard that situation.

A. I do not believe that economists in general have ever tried to answer that question.

Q. Do we correctly understand your testimony, then, to be that economists in general in the application of this principle of uniformity of price in a market have never made any effort to apply it to exchange paid prices at a market as distinguished from quotations?

A. Yes, I think that is true. I do not think they have. Mind you, I am not saying that none ever has, but economists talking generally about this principle of uniformity have not considered precisely that question which you asked, as to whether it is the actual prices, the bid prices, or the offer prices.

Q. It is, then, your testimony that economists in general in applying the principle of uniformity of price in a market would make no distinction between the price which eventuates in a market from bids and offers, say, to a level

of one dollar, even though the bids and offers vary from 50 cents to a dollar and a half; is that correct?

A. I am afraid I would not know about what economists in general would say about that question.

Q. Well, what about economic theory? Is it your testimony that economic theory makes no distinction there
5671 and would apply with equal force in this application that principle of uniformity of price in a market to bids and offers which vary from 50 cents to a dollar and a half and which eventuate into a price of one dollar for the exchange of merchandise on the part of all in a market?

A. I don't know.

Q. I want to read to you a statement, Professor:

"Although it is essential to draw a sharp distinction between sporadic and constant uniformity in fields in which price is determined by direct negotiation between buyer and seller in each transaction, there is no need for a similar distinction in the case of competitive bids which are submitted by the various sellers under seal to a particular buyer or group of buyers."

Do you agree with that statement?

A. May I have it read, or look at it?

Mr. MacIntyre: Let us see if the Reporter has it.

Trial Examiner Norwood. Read it.

(Question read.)

A. I don't understand it. I don't understand that statement.

Q. Now, on direct examination you stated that uniformity of price quotations can result from independent action on the part of sellers. Do you also agree that such condition could result from monopoly control over prices by the sellers?

5672 A. Well, if there is monopoly, of course, there would not be sellers. There would be only one seller.

Q. Whether there is one or more than one, do you agree that there could be uniformity of price when there is a monopoly control over price by a group?

A. Yes.

Q. Just as well as you say that it could be from independent action?

A. Yes.

Q. Is it your testimony as an economist that it is not normal for sellers to—that is, who have advantages over competitors in matters of cost, to take advantage of those differences when they favor one as against the others in

securing sales which otherwise would go to the other sellers if such advantages were not taken in quoting prices?

A. Well, sir, again, without meaning to be pedantic, I am not sure what the word "normal" means, and I would like to leave it out. To say that—I say that such behavior might in some circumstances be an exceedingly sensible and businesslike thing for them to do.

Q. Is it your testimony as an economist that it is usual for a business man not to take advantage of his lower cost which he enjoys, as compared with his competitors, in reducing his price to a level lower than the level of his competitors' price quotations, but instead would quote exactly the same as they and let them come in and take the business away from him?

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A. Well, that is a pretty broad question with respect to the entire field of business.

Q. Well, I want it to apply generally.

A. Yes. I would say that the reason—that it is a common—it is a common type of behavior and that the reason he doesn't cut his price is because he thinks his price cut will be met and he will be no better off than he was before.

Q. Is there anything in the generally recognized and accepted body of economic theory which is to the effect that a seller will not cut his price under those conditions, but instead will permit his competitors to come in and take his business which he could otherwise get by cutting his price?

A. I am not sure about the generally accepted body of economic theory, but if he concludes that it is better for him to—not to try to get all the business by price cutting, as it may well be, then he refrains from price cutting either because it would be too costly to cut price or because the price cut would not be effective and obtain the end sought.

Q. And in making up that decision, you would expect him to look to profits or possibilities of profits?

A. Among other things, yes.

Q. What other things would he look to?

A. Well, what I am really doing is rejecting the over-simplification, as found in so many books on economics, that the maximazation of profits is the end sought in all sorts of pricing operations. In fact, this is not always true. It involves, in the first place, an over-simplification, that the seller, where the seller is a corporation, sets the price. Actually it is set by some man in the outfit, and he may be a sales manager who is trying to

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keep his job, and he may set the price this way or that to make the effect on sales look good, whether that maximizes the profits or not. From the point of view of the corporation, he may be making a ghastly mistake, but if it makes his work as sales manager look good, he regards it as good policy. Or it may be that many concerns are doing what they call keeping their place in the market and are very reluctant to see their percentage of industry sales go down, even though such a decline might be consistent with an increase in their profits.

Most unusual, for example, was the instance of a tire company in New England that was trying to sell all over the United States and contracted their operations to, I think it was, eight States in the immediate vicinity and sold fewer tires and made more money. Sales people who set prices are so volume minded that it is very hard for them in some cases to figure through to the profit maximization, and then, furthermore, is the fact that they just plain make mistakes in the setting of their prices and
5675 the figuring of their marketing expenses, and so on, and thus fail to maximize their profit.

But the whole thing involves an oversimplification of the psychology.

Q. Well, in your teaching in the school of Business Administration in Harvard, you seek to teach your students how to maximize profits if they were to go into business; is that correct?

A. Not exclusively.

Q. Isn't that included as a doctrine that you teach to the students?

A. Oh, perhaps once in a while we may talk about being satisfied with a reasonable profit, although it is not a maximum profit. We do try to teach them to make profits. We feel that making profits hasn't as yet become a crime in this country.

Q. And in teaching them how to make profits, you point to methods used by other business men in making profits in present-day American industry; is that correct?

A. Yes.

Q. On direct examination you stated that freight costs under a uniform f.o.b. mill system of quoting prices in this rigid steel conduit industry would prohibit cross-shipping, or at least you made a statement to that effect.

A. I don't believe I did.

5676 Q. Well, what is your testimony on the point now, if you don't think you gave testimony to that effect?

The Witness: May I have the question read?

(Question read.)

Mr. Gilpatric: Your Honor, I must object to that question because the statement the witness made about freight cost on direct examination was in response to a question as to whether such a manufacturer could maintain continuous contact with many markets. It did not involve the question of cross-shipping.

Trial Examiner Norwood: Read the question.

(Question again read.)

Trial Examiner Norwood: Objection overruled.

The Witness: The counsel amended the question; didn't you?

By Mr. MacIntyre:

Q. I asked you what your testimony on that point is now.

A. Yes. I think it would not completely eliminate cross-shipping, but it would reduce it.

Q. Well, on that part of cross-shipping which would be thus eliminated, is it your testimony that there is no freight cost involved?

A. Well, on the contrary I should say that—that it is the freight cost that is instrumental in reducing the cross-shipping. Of course, I didn't—

5677 Q. I am talking about freight cost of shipments that are now involved in cross-shipping—

A. Yes.

Q. —but which would be eliminated.

A. Oh, yes, of course, there are freight costs.

Q. If those same costs were incurred by a seller or a buyer after a switching from a basing point-method which involved cross-shipping to a uniform f.o.b. mill plan of quoting, cross-shipping could still be carried on; could it?

A. Yes, I think to a small extent and in special circumstances.

Q. Well, if sellers and buyers are willing to assume exactly the same cost without any reduction, the sellers could still reach out and cross-ship as they do now; is that correct?

A. No, I think not as they do now. There would be very little.

Q. Well, if they were willing to do so there would be

nothing to prevent them from engaging in cross-shipping, provided that they and the buyers were willing to accept the cost of it; is that correct?

A. Yes, I think that assumption defines the answer. If they are willing to do it, it would occur.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

5678 Trial Examiner Norwood: Redirect.

Redirect Examination by Mr. Gilpatric.

Q. In your cross-examination by Mr. MacIntyre he asked you about the wheat market.

Mr. MacIntyre: What is the last word.

Mr. Gilpatric: "He asked you about the wheat market."

Mr. MacIntyre: Oh.

By Mr. Gilpatric:

Q. In your opinion, do wheat farmers consider themselves to be in competition?

Mr. MacIntyre: I object to that.

Trial Examiner Norwood: Sustained.

Q. How do you characterize the condition that exists in the wheat market, as an economist?

A. Well, it is one of several possible types of competitive conditions. It is sometimes offered as an example of what some people call pure competition. I am not sure that it is a real example of that, and I furthermore am not sure that the hypothetical condition called pure competition really represents a very high level of competitive behavior. Indeed, I am so skeptical about that, myself, I prefer the rather cumbersome phrase, "the atomistic condition of production, sale and purchase" to describe
5679 this peculiar hypothetical state.

Q. Well, do you consider that the market condition which you prefer to call "atomistic production, sale and purchase" constitutes an ideal economic condition?

Mr. MacIntyre: I object to the question. It is unnecessarily leading the witness.

Mr. Gilpatric: Well, now, Your Honor—

Mr. MacIntyre: It is not otherwise called for.

Trial Examiner Norwood: Objection overruled.

Go on.

A. No, I do not. It is not an ideal competitive condition. It is one which, generally speaking, the business of the country could not possibly conform to.

Mr. MacIntyre: I move that the answer of the witness be stricken because it states a supposition of what could happen in the future. It is a statement of incompetent testimony.

Mr. Gilpatric: It is simply his opinion.

Trial Examiner Norwood: Objection overruled.

Now, off the record here.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. Gilpatric:

Q. In your opinion, Professor Werentte, do you or do you not consider that the market condition so de-
5680 scribed constitutes a criterion by which to judge the presence or absence of competition?

Mr. MacIntyre: I object to that. It isn't necessary for the counsel to testify and ask for an affirmance on the part of the witness.

Trial Examiner Norwood: Objection overruled.

Mr. MacIntyre: That isn't proper.

Trial Examiner Norwood: Overruled.

Go ahead.

A. No, it is not. Commercial Competition, business competition, differs substantially from this hypothetical condition, and albeit that it differs substantially, it is no less really competitive. In fact, in some respects it is very much more highly competitive. It uses many techniques of competition that the simpler hypothetical condition—that are unknown in the simpler condition.

Mr. Gilpatric: That is all.

Recross Examination by Mr. MacIntyre

Q. If you were to consider competition at one extreme, you would consider it as perfect competition; wouldn't you?

A. I don't know whether it is an extreme or merely a possible type.

Q. But it would be—in considering all types of competition, you would consider that at one end, more or
5681 less an extremity; is that correct?

A. In the sense of a mathematical limit, yes.

Q. And at the other pole, the other extremity, would be perfect monopoly; is that correct?

A. Logically, I suppose so.

Q. Well, isn't it so considered by economists in general that you have one extremity, perfect competition, and the other extremity, perfect monopoly? Isn't that correct?

A. No. I think it is not, because of the very considerable difficulty and disagreement among economists in explaining what they mean by "perfect monopoly."

Q. But perfect—

A. There again I don't mean to be evading your question.

Q. But, in your opinion as an economist, is there any more perfect monopoly than there is perfect competition? If so, cite us the instances. Is there absolutely perfect monopoly?

A. I am not sure, sir, that I know what perfect monopoly is. I shall tentatively reply that I don't think there is any such thing as perfect monopoly.

Q. But it is spoken of by economists as being the opposite of perfect competition; is that correct?

A. I suppose it is by some.

Q. Well, in economic theory it is so regarded; isn't that correct?

A. No, it isn't.

5682 Q. What is the opposite?

A. It is a matter of—

Mr. Austin: Your Honor please, I object strenuously to Mr. MacIntyre's arguing with the witness. If he wants to ask a question and wait until the answer is finished and then ask another question, I have no objection, but when he interrupts and argues with the witness, I do object.

Trial Examiner Norwood: I think the examination is going on in a fairly normal way.

A. No. I wish to say simply that economists at the present time are, in fact, disagreeing with each other about what they mean by "perfect monopoly."

Q. And perfect competition?

A. No. I think there is a fairish measure of agreement on what "perfect competition" means and the distinction between that and pure competition.

Q. Is there any agreement among economists that the term "perfect monopoly" is as much of an abstraction as the term "perfect competition"?

A. Well, I don't think economists in general realize how much of an abstraction either one is.

Q. But you consider them—you, as an economist, consider that both of them are abstractions; is that correct?

A. I do; yes, sir.

Q. And this term "commercial competition," to
5683 which you made reference during the course of your redirect examination by Mr. Gilpatric, is something that doesn't fit either of those abstractions; isn't that correct?

A. Oh, that is right.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Thank you, Doctor.

(Witness excused.)

Mr. Gilpatric: Can we take luncheon recess, Mr. Examiner?

Trial Examiner Norwood: Recess until 1:30.

(Whereupon, at 12:15 o'clock p. m., a recess was taken until 1:30 o'clock p. m. of the same day.)

5684 Afternoon Session.

1:30 P. M.

Additional Appearance:

W. W. Robison, Esq. (Cravath, deGersdorff, Swaine & Wood, 15 Broad Street, New York City).

Trial Examiner Norwood: The hearing will come to order.

Call your next witness.

Mr. Robison: I will ask that Dr. Homer B. Vanderblue be sworn.

Doctor, will you come up here and be sworn.

HOMER B. VANDERBLUE was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

Trial Examiner Norwood: Now. off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. Robison: There is a special purpose in calling Dr. Vanderblue as a further expert witness in that he is not

only skilled in the general field of economics, but is especially skilled as an expert in the field of both marketing and of business management, and we wish to put in his testimony as presenting to some extent a different point of view on the problems that are presented here.

Trial Examiner Norwood: Well, are you going to
5685 cover any different subjects from what you covered with the other witnesses?

Mr. Robison: There will be differences to some extent.

Trial Examiner Norwood: Well, I shan't permit a general examination of this witness here. We have had three, and two were plenty. If you care to cover something new, or give us new information, you can touch on that, and just that. There is a limit to the time, and it is well within my discretion.

Do you wish these qualifications put on the record?

Mr. Robison: Yes, I am going to proceed with that.

Trial Examiner Norwood: Go ahead.

Direct Examination by Mr. Robison.

Q. Professor Vanderblue, I show you a statement, which purports to be a statement of your training, experience, and qualifications as an expert in the field of economics and as a student and expert in the field of business management, and ask you whether you have previously seen that statement.

A. Yes, sir; I have.

Q. Does that statement correctly set forth your training, experience, and qualifications as an expert in those fields?

A. Yes, sir.

Q. You testify to the truth of the statements
5686 therein contained?

A. I do.

Mr. Robison: I ask that the statement that the witness has verified be incorporated in the record as the testimony of the witness concerning his training, experience, and qualifications as an expert in the field of economics and as a student and expert in the field of business management.

Trial Examiner Norwood: It may be entered in the record.

The statements which the witness has testified to are as follows:

I am at the present time Professor of Business Economics and Dean of the School of Commerce at Northwestern University, Chicago. I received my B.A. Degree at Northwestern University in 1911, an A.M. Degree there in 1912 and a Ph.D. Degree in economics at Harvard University in 1915. I was an assistant and instructor in economics at Harvard University from 1913 to 1915. I was Assistant Professor of Transportation at Northwestern University from 1915 to 1916 and Associate Professor of Transportation there from 1916 to 1920 and Professor of Transportation there from 1920 to 1922. I was Professor of Business Economics at Harvard Graduate School of Business Administration from 1922 to 1929 and during
that period was also Director of Harvard Economic
5687 Surveys. I have been Professor of Business Economics and Dean of the School of Commerce at Northwestern University since 1939.

I was Research Director of the Industrial Research Committee of the Denver Civic & Commercial Association at Denver, Colo., from 1920 to 1921. I was a Vice-President of Tri-Continental Corporation from 1929 to 1937, and was consulting economist on price policy for General Motors Corporation in 1938.

I have been the author of publications as follows:

Railroad Valuation, 1916.

Railroad Valuation by the I.C.C., 1920.

Railroads: Rates, Service, Management (with K. F. Burgess), 1923.

The Iron Industry in Prosperity and Depression (with W. L. Crum), 1926.

Problems in Business Economics, 1924 (Revised 1929).

Economic Principles, A Case Book, 1927.

I also am Honorary Curator of Early Economic Literature in Baker Library of Harvard University, a member of the Committee on Economic Bibliography of the British Academy, and, as Curator of the Kress Library of Business and Economics at Harvard, am a member of that faculty. I have been a member of the American Economic Association for over 30 years, and am a member of
both the American and British Economic History So-
cities. I have contributed to the American Eco-
5688 nomic Review, the Harvard Law Review, the Jour-

nal of Political Economy, and the Quarterlyl Journal of Economics. I am a member of the Faculty Editorial Board of the Harvard Business Review.

I have taught the following subjects:

Economic Theory and Economic History.

Marketing.

Railroad Rate Structures and Railroad Economics.

Business Economics.

Business Policy.

Problems in Business Administration.

Trial Examiner Norwood: Proceed.

By Mr. Robison:

Q. Dr. Vanderblue, in your studies and in your teaching have you given special attention to the subject of marketing and the pricing of merchandise?

Mr. MacIntyre: I object. I object to any other question that is put to this witness which seeks to elicit from him statements of opinion or statements concerning economic theory which involve the subjects that were put to other experts and from which we secured their opinion for the Respondents here.

I want to ask that this objection be taken to all questions of that nature put to this witness so that I need 5689 not make specific objections.

I also object to the present question on the ground that it is, by virtue of the fact of accumulation, irrelevant and immaterial.

Mr. Robison: Of course, this particular question is a further step in qualifying the witness.

Trial Examiner Norwood: Yes.

Well, I shall ask the counsel to make an offer of proof at this time as to the matters which he expects to establish by this witness.

Mr. Robison: Well, for the moment, Mr. Examiner, as I have said, the pending question has reference only to the matter of the qualifications of the witness. It seems to me that question should be answered.

Trial Examiner Norwood: Read that question.

(Question read.)

Trial Examiner Norwood: You may answer that question.

A. I have.

By Mr. Robison:

Q. Have you in your studies given—

Trial Examiner Norwood: Now, wait a minute. Before we do anything else I want an offer of proof. What are you going to show by this witness?

Mr. Robison: Well, before I make the offer of
5690 proof, Mr. Examiner, I wish to complete my qualification of the witness as an expert qualified to testify in this proceeding. Now, I have just—

Trial Examiner Norwood: It will not be necessary. I want to know why you introduce this witness, and I think your offer of proof belongs right here and now.

Mr. Gilpatric: I want to make a statement at this point, Mr. Examiner, and I want to make it very emphatically, that the expert—

Trial Examiner Norwood: You may use any emphasis that you wish within parliamentary limits.

Mr. Gilpatric: —emphatically, but respectfully, that the expert evidence tendered in this case differs from the type of expert evidence that is ordinarily dealt with and referred to in the cases which leave the question of extending the evidence to the discretion of the tribunal.

The complaint in this case puts in issue certain principles. For example, paragraph 3, count 2, of the complaint makes this statement: That nearby customers are, under the pricing system employed by these Respondents, deprived of price advantages which they would naturally enjoy by reason of their proximity to points of production.

Now, we say there is no law, economic, moral, or otherwise that establishes any such proposition.

It is not a question, therefore, of our just advis-
5691 ing and instructing the tribunal on that subject. We are entitled to meet that issue.

Now, furthermore, we know from the writings of certain members of the Commission, from reports that have been put out, that the Commission entertains certain fixed views on certain of the subjects in issue in this case, including varying mill nets, freight absorption, and I conceive that we are entitled here to meet the charges in the complaint, not simply to advise the Commission or the courts, when we put this evidence in.

As far as an offer of proof is concerned, we propose not to lump the whole thing in one offer, but to go through and ask our questions, and if they are objected to we will

make an offer of proof, so that the Commission will have before it, what we think this witness is entitled to testify to.

Trial Examiner Norwood: Well, I will hear this witness—

Mr. Robison: May I add something to what Mr. Gilpatric has said?

In Monograph 42 of the Temporary National Economic Committee, entitled "The Basing Point Problem" and marked as a Study Made by the Federal Trade Commission, this statement was made on the part of the Commission:

"A striking feature of the corporation's"—I inter-
5692 ject there that refers to the United States Steel Corporation—"defense of the basing-point system is its almost complete reliance upon abstract criteria and abstruse theory plus some irrelevant facts."

Mr. MacIntyre: I except to Mr. Robison's statement that that is a statement by the Federal Trade Commission.

Trial Examiner Norwood: Go on. Finish your statement.

Mr. Robison: Now, in view of that criticism of a defense of the basing-point system in an inquiry in which the Federal Trade Commission interested itself, I think that we are entitled to introduce expert testimony on the part of one who will speak from the study of business management, so that in our case it may not be said that our defense is based almost completely on reliance upon abstract criteria and abstruse theories.

Trial Examiner Norwood: Now, you do not have to waste any words on me to induce me to receive any information here that will be of value in solving these problems here, that will help the Respondents or help the Commission in any way. I am ready to receive it. But if you have any such, I think it will be very easy for you to tell me about it, in view of the fact that we have spent almost two weeks here receiving opinion evidence from the Respondents. Now, if you have that, and have something different than what we have spent this ten or more days on, I
5693 think you can tell me about it, and if it is not, I am not going to hear any more witnesses.

Mr. Robison: The principles of economics and of business which are involved in the issues of this case are somewhat limited in their scope. As I have already said,

what I am proposing to present here is a view of an expert with reference to those problems who approaches them from a different point of view, a different background, a different background of study and experience, than has been that of the former witnesses that we have presented. The questions asked of him will not be, certainly not altogether, identical with those asked of other witnesses. More than that, I may say to you, Mr. Examiner, that we have, in line with the suggestion that you made—I think off the record—some two days or so ago, we have, in so far as we have thought it possible, streamlined the course of the examination that we propose to put to this witness, and I think that we should be considered well within our rights in urging that the testimony of this witness be taken, and I can assure you it is not going to take very long, certainly not on direct.

Trial Examiner Norwood: You intend to approach this from the standpoint of business management and not from that of economic theory?

Mr. Robison: This witness is qualified in both fields.

This witness is an economist, dean of a school of busi-
5694 ness at Northwestern University, School of Commerce, and an economist by training and a specialist in the field of business management in addition.

Trial Examiner Norwood: I will ask you one more time—I have asked it several times—what do you want to show by this witness?

Mr. Robison: I am not sure that I am prepared to or can review—it would take me some little time to compose a complete statement of what I propose to show by this witness, but it may be covered in very broad outline by the statement that we propose to show by this witness, of course through opinion testimony, that the basing-point method of quoting and selling commodities, and in particular on the basis of the assumed facts with reference to this industry, the basing point—the following of the basing-point method of quoting and selling in this industry is a normal and natural development and procedure in the sale of rigid conduit. That, I say, is in broad outline, very broad outline, what we propose to show by the testimony of this witness, his opinions being presented, as I previously said, from a new background.

Trial Examiner Norwood: Now, off the record a minute.

(Discussion off the record.)

Trial Examiner Norwood: You may proceed with this witness as long as you have some new approach, and
5695 I shall judge the questions as they come up.
Go ahead.

Mr. Robison: Well, now, as I recall the state of the record, Mr. Examiner, I had a partly framed question which still had bearing on the matter of the qualification of the witness.

Trial Examiner Norwood: I think I will let him answer. Would you answer that?

Mr. Robison: The question was not completed, as I recall it.

Trial Examiner Norwood: Go ahead.

By Mr. Robison:

Q. I ask you, Dr. Vanderblue, whether in your studies you have given special attention to the study of the basing-point method of quoting and determining prices of merchandise?

A. I have.

Q. As a student and expert in the field of business management, what do you understand by the term "competition"?

A. Competition—

Mr. MacIntyre: Just a moment.

I object and I would like to again state that I do not want to object to each question, if I may have at this time an understanding that I have an objection to all questions put to this witness on the same point, whether or not
5696 they are worded the same, as having been put to previous expert opinion witnesses here.

Trial Examiner Norwood: You have objected to the entire evidence of this witness.

Mr. MacIntyre: As being cumulative.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: As being cumulative opinion expert economic testimony.

Trial Examiner Norwood: Now, if he is going to give any testimony he is entitled to give his definitions.

I overrule that objection.

By Mr. Robison:

Q. Do you wish the question read?

Trial Examiner Norwood: The question was your definition of competition.

A. I would define competition as the struggle for outlets, the seeking of markets for commodities.

Q. What is meant by the term "price competition"?

A. Price competition refers to the successive cutting of prices in a common market by different persons who are seeking to get an outlet in that market.

Q. Does that process result in a level of prices in the particular markets?

A. If there is—you are in a competitive struggle of that character, each one of the persons seeking for an out-
5697 let will tend to meet the price which is set by the—the next lower price until such time as the price is set by the willingness of one man to stay in the market to furnish the supply, the others meeting his price, and at that point the price will stabilize and that will be the cost—or the price at which it will stop and will be the cost of the least advantageously situated producer which enters that market.

Q. As a student of marketing, how do you define the term "market"?

A. A market consists of the negotiations between buyers and sellers. That is the general and broad definition. You can break that down into several different kinds of markets; that is, they can be geographical markets; they may be particular geographical areas or they may—particular uses; that is, the market for a commodity may not always be for the same use. There will be, in a sense one might say, competing markets where the uses of the commodity would be different from each other.

Q. Dr. Vanderblue, have you read and are you familiar with a statement of facts marked "Statement of Facts for Hypothetical Question" which has been spread on the record in this case in connection with the testimony of a previous witness—

A. Yes, sir.

Q. —and of which I now show you a copy (handing hypothetical question to witness).

5698 Mr. Robison: For the record, I would state that this statement—

The Witness: I am familiar with that document.

Mr. Robison: Just a moment.

The Witness: Excuse me.

Mr. Robison: I would say in connection with my question that the statement of facts referred to is found at pages 4902 to 4913 of the record.

A. I am familiar with the document; yes, sir.

By Mr. Robison:

Q. Now, with those facts in mind—and for purposes of identification I may hereafter refer from time to time to them as the statement of facts for hypothetical question A—I ask you to answer this question:

In your opinion, on the facts assumed in that statement of facts, could such a marketing plan as is therein outlined logically develop and continue to exist in an industry where competition prevails?

Mr. MacIntyre: I object on several grounds. I will state them if Your Honor cares for me to.

Trial Examiner Norwood: Objection overruled.

The Witness: Will you—the point—just the point of the question.

Trial Examiner Norwood: The question is, Is it inconsistent with competition?

5699 A. It is not inconsistent with competition. It is a market structure which is worked out through the forces of the competition, the struggle of the various producers to get outlets.

By Mr. Robison:

Q. Is the basing-point method of quoting prices and fixing prices substantially one that you, as a student and expert in the field of business management, recognize as a normal business procedure in competing in the pricing and sale of merchandise?

Mr. MacIntyre: May I have that question read?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. MacIntyre: Object to that question. There is no foundation laid for that question.

Trial Examiner Norwood: It comes within the range of his expertness, I would say.

A. It is.

Trial Examiner Norwood: Objection overruled.

A. According to any business behavior observed by you, could the use of such a method arise naturally as result of competitive forces?

Mr. MacIntyre: I object to that. There has been no foundation laid for that question to show that this witness is competent to answer it. It is the same thing as 5700 showing or asking a witness, first, if it is a white cow without showing and qualifying him as one who has seen a white cow.

Trial Examiner Norwood: I think in the intensity, you might say, of our discussion here this witness has not been presented as an expert. His qualifications have been put down, but from the facts before me here—from the testimony before me I do now admit him as an expert in the—

Mr. MacIntyre: Well, if Your Honor please—

Trial Examiner Norwood: —science of economics, especially relating to marketing.

Mr. Robison: And the field of business management.

Trial Examiner Norwood: Yes.

5701 By Mr. Robison:

Q. Dr. Vanderblue, how do you define a basing-point method of quoting and selling?

A. The basing-point method of selling is establishing delivered prices on the basis of using the price at a
5702 particular point of production as the—plus transportation cost to the point of delivery as the basis for all producers selling in that common market.

5704 Q. Professor Vanderblue, you have already stated in response to a question of mine that you are familiar with the statement of facts referred to here as the statement of facts of hypothetical question A, but I ask you in particular to refer to paragraph 12 of that statement (handing to the witness).

A. That calls for an answer, I take it?

Q. Not yet. I come to my question now.

A. All right.

Q. Now, I ask you whether the facts which you have been asked to assume and as set forth in that paragraph conform with your understanding of the term "basing-point method of selling"?

A. They do.

Trial Examiner Norwood: That motion is denied,
5705 then.

That is, these facts you have assumed respecting the basing point constitute the basing point described in this paragraph 12?

The Witness: In paragraph 12; yes, sir.

Trial Examiner Norwood: All right.

By Mr. Robison:

Q. In order to have such a method of selling used as is defined in paragraph 12, to which I have called your attention, in your opinion would certain of the elements of

that method of selling have to be planned in concert,—planned by the manufacturer who is doing the selling in concert with other manufacturers and sellers?

Mr. MacIntyre: That is objected to. There is no showing that this witness can answer that on the basis of any knowledge that he has been shown to have.

Trial Examiner Norwood: Read that question.

(Question read.)

Trial Examiner Norwood: You mean could that situation come about by the natural operation of the economic forces? Is that what you mean?

Mr. Robison: That in substance is another way of stating the question.

Trial Examiner Norwood: Yes.

You may answer it from that standpoint.

5706 A. It could be worked out as the resultant of the seeking of persons differently circumstanced to get outlets in a common market—

By Mr. Robison:

Q. And to refer more specifically to the question that—

A. (Continuing) —without being the resultant of the forces, and not at all with the calling for or implying any element of concert.

Here the facts are known, according to the statement. The freight rates are known. It is a matter of public property. And one man knows what he has got to do to meet the other man to sell in a common market. Therefore, it would happen quite normally as the result of competitive forces.

Q. Under the conditions stated in hypothetical question A, in your opinion is each conduit manufacturing company selling in a single market or in several markets?

A. Most of them are selling in several markets under the conditions. It is primarily the question of a geographical market. The conditions of the governing industry which consumes this vary in different parts of the country, and the necessity to meet those several markets calls for this marketing organization and procedure.

Q. Under those assumed conditions, in your opinion, what advantages, if any, accrue to a conduit manufacturing company by seeking to sell its products in numerous markets?

5707 Mr. MacIntyre: I object. There has been no foundation laid to show that this witness has any knowledge that would permit him to speak competently in that direction.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

A. The great problem of the manufacturer is to keep an even flow of goods through his plant, because by so doing he has lessened his labor problem and keeps his costs evenly.

It is a matter of two factors, I should say, where this system conduces and helps to that degree: One is the fact that the seasonal activity in the building industry is different in different parts of the country. It is very different in New York City from what it is, we may say, in Houston, Texas, where they have a mild climate, and it is also true that when building activity can be very dull, and has been dull, in New York City, it can be very active, say, in Houston, Texas, as it has been in recent years.

So that the manufacturer by selling in different markets is able to maintain the even flow of—a more even flow of his goods, and thereby to cut down his costs. The overhead is spread more evenly.

By Mr. Robison:

Q. In order to be in a position to compete for a share of the business when demand springs up in a particular market, under the same assumed conditions, what
5708 marketing arrangement would appear to you to be necessary for the manufacturing company?

A. It would be necessary for him to have supplies of the goods in close proximity to the points of consumption. It would be necessary also for him to have established business relations with persons in whom he has confidence at those several points. I think those are the two principal factors that enter into the picture.

Q. And when you refer to persons in whom he has confidence, do you refer to possible purchasers or—

A. Well, I am thinking particularly of what we might call the depots, where the supplies are kept, where he has done business with his dealer or his consignee in this case over a period of years, where he knows the credit relation-

ships, where he knows that the man has the know-how to sell his product.

The most important single thing, after all, in the marketing of a stable commodity of this character is to have the outlets with people in whom you have confidence. I should say that is the first principle not only of marketing but also of the general management of the business.

Q. In your opinion, is the sort of marketing arrangement that you have described one that is competitive or non-competitive in character?

5709 Mr. MacIntyre: I object. There has been no foundation laid to show that this witness has any knowledge of what the actual facts are in this conduit industry, and therefore can only assume from what was put forth in the hypothetical question A as to whether or not there is or is not competition, and it would be improper for such an assumption to be made on the basis of the hypothesis in that question.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I think he may add to his own concept there.

Mr. MacIntyre: But unless a man has examined all of the facts surrounding a situation—witness after witness who have been here—

Trial Examiner Norwood: He is not testifying about the rigid steel conduit trade here, is he?

Mr. Robison: Not specifically. Not specifically.

Trial Examiner Norwood: He is testifying to general theory, as I understand it.

Mr. MacIntyre: The basing-point system, which is included in that question, and has been adopted by him as being attached to still other industries, he is now asked is that competitive or is it not, and I contend that, on the basis of what the record shows here, neither he nor any other man can state whether or not this is competitive without examining the facts, which he has not been

5710 shown to have done.

Mr. Robison: The question that is asked the witness is whether the sort of marketing arrangement that he has referred to is one which may be a competitive or whether one that he would consider necessarily a non-competitive method.

Now, nobody questions that under any method of selling

there might be elements brought in which would make it non-competitive.

Trial Examiner Norwood: Now, if the question reads that way, it may be answered.

Read the question again.

(Question again read.)

Mr. Robison: I will ask to amend my question to read Is it one that may be competitive in character.

Trial Examiner Norwood: Yes. Well, he may answer it. Go ahead.

A. Utilizing the definition of "competition," which I gave as the struggle for market, this may be competitive.

By Mr. Robison:

Q. Under the conditions assumed in hypothetical question A, in your opinion, would it be practicable for the manufacturing company producing rigid steel conduit to instruct its salesmen to quote the same price f.o.b. that
5711 manufacturer's plant?

Mr. MacIntyre: I object.

Trial Examiner Norwood: Objection sustained.

Mr. Robison: I will ask at this point, Mr. Examiner, to make an offer of proof by this witness, that in the opinion of the witness, on the basis of the facts assumed as stated in hypothetical question A, it would not be practicable for a company manufacturing rigid steel conduit to instruct its salesmen to quote the same price f.o.b. its manufacturing plant, and that among the reasons for that view on the part of the witness are that the buyer wants to know the delivered price, which is the buyer's cost, on which he makes his bid for construction jobs he may be undertaking, and because the salesmen are operating in different markets, and each must be able to quote a price which meets the competitive situation in the area where he tries to sell, and if all the salesmen, wherever they might operate in the country, were instructed to quote the same price f.o.b. the factory, the price being one that would permit the seller to stay in business, sales would be made infrequently in many of the local markets; that because, further, relations with distributors and with contractors would not be maintained effectively, and that the normal competitive procedure for each manufacturer to sell—I will correct that—and that in the opinion of the witness it would not be the normal
5712 competitive procedure of each manufacturer to sell to everybody at the same f. o. b. factory price.

Trial Examiner Norwood: The testimony is rejected and the counsel has his exception.

Mr. MacIntyre: May we go off the record for just a second?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Proceed.

By Mr. Robison:

Q. Professor Vanderblue, is there any method of quoting prices, in your opinion, which particularly fits the conditions assumed in hypothetical question A if the price must be adjusted to meet the competitive conditions in each local market?

A. The price system which is established on the basis of delivered prices, and as outlined in hypothetical question A, is a system of established prices to meet the competitive situation in each local market.

Q. And why do you express that view?

A. Because the price is always set in a competitive market by the price which the least advantageously situated producer who goes into that market is willing to take, and necessarily, these being delivered prices, it is the mill net
that he is willing to take, always taking into account
5713 the freight, which determines whether or not he will be
in that market. It frequently happens that a man definitely withdraws from the market if he cannot get a profitable net return.

Q. Under the conditions assumed in hypothetical question A, would you expect to find a substantial degree of identity or uniformity in price quotations submitted by conduit sellers in bids for public openings?

A. In view of the facts given in the hypothetical question, with the material published, with the knowledge being known, and with the freight rates being generally known for all of them, that being a matter of public record, I should expect substantial identity in the bids.

No man is going to bid lower than that presently bid by the others under the force of competition, and in an established market organization of this character I should expect the prices to be substantially identical in matters of this kind, which are the result of public specification and public advertising.

Trial Examiner Norwood: Would that be true where they are sealed bids?

The Witness: Yes, when all the facts are known. By the hypothetical question, everybody knows what everybody else's announced price is. Everybody else has access to the railroad tariffs. All it takes is a smart boy, a railroad tariff, and a sharp pencil to figure it out. I did it
5714 myself 30 years ago.

By Mr. Robison:

Q. In your conception of competition, does competition exist where one seller of a standard commodity merely meets,—that is, makes his price the same as the price of a like seller in the same market, or is it essential, in your opinion, in order for competition to exist that the one seller makes his price lower than the other sellers?

Mr. MacIntyre: May I have the first part of the question?

Trial Examiner Norwood: Read it.

(Question read.)

A. The answer to that question is that if he meets the price he is being competitive. At that point the person who is the purchaser has the choice at the same price, and two people struggling in the market, that man has the alternate. There is an alternate source of material available, and it is competitive.

By Mr. Robison:

Q. Let us assume that the evidence shows that a very substantial number of the manufacturers of rigid steel conduit submit to a contractor bids for his requirements of conduit for a proposed building which are at the same delivered price, for the same quantity and kind and specification of conduit, for delivery at the same specified time.

5715 Would you infer from that evidence that the sameness in price was due to an agreement or understanding or other collusive activity among such manufacturers?

Mr. MacIntyre: I object.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection sustained.

By Mr. Robison:

Q. Are varying factory net proceeds per unit sold inconsistent with the principle that prices of different sellers

tend to be uniform under competitive conditions in any one market?

A. They are not at all inconsistent, because it is the delivered price which is the significant thing to the purchaser of the commodity as set forth here.

Q. In your opinion, are varying factory net proceeds per unit sold indicative of a failure of the seller to follow his self-interest in a normal competitive manner?

A. The varying mill nets are the result of the requirement that he is able to meet the prices. He must be able to meet the prices of his competitors in the common market. That means the delivered price. And if he is selling in one area for one net because of the transportation costs, he may be selling in another area for a different net because of that difference in transportation. It is not at all inconsistent either with his self-interest or with the com-
5716 petitive operation. There is a point at which the will stop selling, and that is when his costs are such, plus the transportation that he has to absorb, such as to give him no profit. He then withdraws from it, and there is a definite area around the plant where they do not go.

Q. Under the conditions assumed in hypothetical question A, in your opinion, would it be normal competitive procedure for a conduit manufacturer to quote an f.o.b. factory price that was unrelated to the delivered prices in the various local markets where he hopes to obtain patronage?

5717 A. It would be very abnormal because it is necessary for him to know that price to see what he is going to meet.

By Mr. Robison:

Q. If—

Trial Examiner Norwood: Well, suppose it owed its lack of relation to the fact that the f.o.b. mill price he quoted was lower than an f.o.b. mill related to the delivered price at the same point.

The Witness: Under the circumstances, what he would be doing in effect is cutting the delivered price.

Trial Examiner Norwood: Yes.

The Witness: Then the fat would be in the fire. That is, presumably he would be the lowest cost—he would be the man that was going in. The other would have to meet
5718 it or withdraw from the market.

Trial Examiner Norwood: That would be uneconomic?
The Witness: Quite conceivably. Depends on whether he makes any money out of it or not.
Trial Examiner Norwood: Go ahead.
The Witness: I got your question.

By Mr. Robison:

Q. If a conduit manufacturer, under the conditions that I have asked you to assume, operating intelligently in his own self-interest, should quote f.o.b. factory prices which were related to the delivered prices in the various local markets where he hopes to obtain patronage, would the net factory amounts received differ from those received under the basing-point method of quoting prices?

A. The identical thing. He figures f.o.b. by knowing what the delivered price was and deducting the freight. What is the difference? That is in effect what he does.

Q. Under the conditions assumed in hypothetical question A, in your opinion, would competition permit a conduit manufacturer to quote an f.o.b. factory price unrelated to the delivered prices in the local markets where he hopes to obtain patronage?

A. It would not, for the reasons given in the previous answer.

5719 Q. If a conduit manufacturer refrains from quoting an f.o.b. factory price unrelated to the delivered prices in the various local markets where he hopes to sell, from your observations of business behavior, does that action indicate to you a lack of competition?

A. Not at all, because by definition I say that competition is the seeking for outlets, and the way that people get in on a common basis is by meeting the common price which tends to be set by the person which is just willing to go in, for whom it is just profitable.

5722 Q. Professor Vanderblue, from your observations and studies, what do you say as to whether or not it is necessary that prices should change with any specifiable frequency in order to have a true market?

A. In order to have a true market the people—different producers seeking to get their outlets at a common point of destination, the prices could be maintained over a considerable period of time. The situation in industries with —such as this one, with the economic characteristics surrounding it, is such that the prices are not likely to change

very frequently, those conditions being the ones specified in the hypothetical question.

Q. Under the conditions assumed in the hypothetical question A, is it, in your opinion, normal competitive procedure for a manufacturer of rigid conduit to protect contractors on changes of price?

A. Yes, because that goes back to the answer I gave earlier, namely, that the important thing is that he should have his established business relations with his outlets in order to be able to meet the market, and that being—I mean—

Trial Examiner Norwood: Now, I don't think that 5723 is questioned in any way; is it?

Mr. Robison: Well, I am somewhat at a loss to know just what is questioned and is to be questioned here. If I may consider that I have your assurance that it will not be, why I will be quite content.

Trial Examiner Norwood: I don't know that it is questioned. I don't think so.

Go ahead.

Mr. MacIntyre: There is a question in that direction in the complaint to the effect that these people, through a common understanding, adopted these contracts that carry these provisions in them.

Trial Examiner Norwood: That is another question.

Mr. MacIntyre: Yes.

Trial Examiner Norwood: Go ahead.

By Mr. Robison:

Q. On the facts assumed in hypothetical question A, how could you explain the failure of the sales of conduit to respond promptly to a change in price?

A. The first point is that the demand for conduit is dependent, not upon the price relationship, but upon the intensity of demand which comes for the demand of finished buildings or for repairs. In other words, this happens to be a commodity where the demand is all derived from the demand for another commodity, namely, fin-
5724 ished building structures or repaired building structures, where also a change in price in this, which is a small part of a building, will not increase the amount to be considered, and, whereas the third point—and I think this is very important—that the governing factor in the amount of conduit that is going to be sold is governed by the changes in the intensity in building activity.

If I might lapse into the economist's vernacular, Mr. Norwood, I would say it depends upon whether or not the demand curve is being pushed to the right.

Mr. MacIntyre: Well, if Your Honor please, I move to strike the answer of this witness which has just been given because he has not qualified here as a factual witness and as one that has any knowledge as to whether or not demand for conduit is dependent upon the price charged for it and—

Trial Examiner Norwood: Were you basing that on the assumptions there?

The Witness: I am basing it on what is told me in here. Now, I can't put my finger on the exact paragraph.

Mr. MacIntyre: In other words, you have interpreted that hypothetical question A as carrying that as a statement of fact; have you?

The Witness: I thought I was entitled to apply my intelligence to the premises, Mr. MacIntyre.

Trial Examiner Norwood: Motion denied.

Go ahead.

5725 By Mr. Robison:

Q. On the facts assumed in hypothetical question A, if a conduit seller were to reduce its price at one point, how far reaching would that action be, in your opinion?

A. A market structure such as this one set up both physically and vis-a-vis prices is one where any break in it is likely to result in the breakdown of the whole market structure; that is, prices are liable—it goes back to the old things we did when we were youngsters with the worn-out deck of cards in making houses of cards. If you take one out the structure collapses because it spreads from one and then to another and then another, and you would expect that the whole price structure would change.

Q. In your opinion, what bearing would the far-reaching effects in a reduction of price of conduit at one point have upon the frequency of change of prices?

A. The bearing which it has is that when these changes are known, since the information is generally available, that people will move very slowly in changing their prices.

Q. In paragraph 21 of the statement of facts for hypothetical question A, it is stated that during the last eight years there have been as many as fifteen changes in the quotations of conduit prices published by various conduit

manufacturers, the period of time between the dates of such changes varying from less than a month to approximately a year and a half. Now, assuming that that
5726 statement states facts, do such facts indicate to you an absence of competition?

A. Not at all. I think it—the very fact that the prices did go down, particularly since they are related to the—follow the changes in price of pipe, indicates that if the price of pipe goes down, one man drops his price, all of them immediately have to meet it. If it was a monopolistic situation, if the price of pipe went down the one could freeze his price on conduit, but as a matter of fact the two run pari passu, which is in accordance with this statement stated here in the hypothetical statement of facts.

Q. On the facts assumed in that statement of facts, do you consider rigid steel conduit a homogeneous commodity?

A. By definition the—can I refer to this (indicating hypothetical question A)?

Q. Oh, yes.

A. I just want to be sure.

The statement in here is that it is a common specification, minimum specification, set by the Underwriters Laboratories and tested, and I should say it was a homogeneous commodity, no style factors, and being one of those things that you sell by the foot or by the pound. I have bought it by the foot.

Q. In a true market, what degree of similarity would you expect to find in the prices quoted by competitors
5727 for a manufactured product of standard specifications?

A. I should expect those prices to be substantially identical in any market where the people were seeking their outlets.

Q. In a competitive market would you expect the seller of a product such as rigid conduit to be raising and lowering his price quotations each time that an attempt is made to effect a sale?

A. No. In the first place, he would have all his purchasers, who are mainly electrical contractors, and so forth, and who want certainty of price quite as much as they want a moderate price, a fair price, and, in the second place, when you are dealing in a marketing organization with procedures such as are established here, selling through salesmen and selling through dealers, you would

have such a complication or upsetting of the situation that you would have no way of doing business in any orderly way or in any way that could be controlled managerially in carrying out a consistent policy.

Mr. Robison: Mr. Examiner, if we might have a short recess at this point, I think perhaps I could make it result in shortening my further examination.

Trial Examiner Norwood: Five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: All right.

By Mr. Robison:

Q. Dr. Vanderblue, is it common for economists
5728 to differentiate between long range tendencies and short run fluctuations?

A. Yes, between temporary changes and longer run and very long secular changes. Those are concepts that are familiar to economists.

Q. May or may not long-range tendencies manifest themselves under competitive conditions?

A. Yes. They are likely—the long range tendencies may take several months to work out, but if there is a downward trend in certain raw materials your prices are going to recognize that fact frequently in anticipation. Particularly if one man is out of those raw materials, is able to get the supply at a lower price, he sets price that the others have to follow or withdraw from the market.

Q. On the basis of the conditions in the rigid steel conduit industry, as assumed in hypothetical question A, in your opinion is the rigid steel conduit industry one in which logically price adjustments might take place from a long range standpoint without short run fluctuations?

A. Yes, they could. By that I think I ought to define what I mean by "short". By "short range" I mean one every two days, and by "long run" might be several months or might be several years. There would be no occasion for what we might call jiggling prices, and yet the long-run trend might well be downward. See, the most difficult thing in any manufactured commodity to catch is your labor cost. That is more and more
5729 frozen, and your prices will tend to stay rigid, relatively rigid. We are speaking in relative terms. And any commodity where there is a lot of labor in it. We have seen that situation develop in the last—in the last four or five years.

One thing you don't get down or it is very difficult to get down in wage rates or wage costs, and that tends to keep your prices rigid. On the other hand, if raw materials drop or, in this case, as cited by the hypothetical question, if the price of pipe comes down, prices will move very quickly.

Q. Would the adjustment of prices in such an industry only in accordance with a long range outlook indicate to you an absence of competition?

A. Not at all because it may take some months for those competitive forces to operate.

Q. In your opinion, does the adjustment of prices in such an industry in accordance with the long-range outlook tend to have any effect on the degree of similarity of price conditions?

A. Will you repeat that, please, sir?

Mr. Robison. Read it.

(Question read.)

A. If prices move slowly or likely to move rather slowly, I suspect at the time—I suspect that it would
5730 not take very long for the news to travel around, and under those circumstances you would expect similar action to follow pretty well in an industry which took some time for the prices to readjust. I mean it is—nobody has illusions in a competitive industry, but the information gets out. And if you are a business man you are going to know the problem of position, of responsibility, and operating and working on the problem of the policy of the business, you know good and well that information is going to get out. It always does. One of the men in the organization may not leak, but the purchasing agent will talk.

Q. From your observation as an economist, may or may not the sale of merchandise at a delivered price other than by the use of the basing-point method involve the absorption of freight by the seller?

A. I think it does in many other instances. To go back to the question which we had before, it doesn't make much difference whether you take the freight rate into account and have a price f.o.b. the mine, we will say, on coal or whether you have a basing-point system. The fact is that you have got to get your commodity in the common market on a comparable price basis, quality considered.

Q. When merchandise is sold at a delivered price and

there is an absorption of freight by the seller, does that indicate to you an absence of competition?

5731 A. It is one way in which competition is working out. If the man will not absorb the freight—or the delivering cost, he just doesn't sell the goods at all. He is not required to enter the market. If he is going to enter the market he has got to meet the price at point of delivery that the other man establishes.

Q. In principle, as an economist, do you find any grounds for distinction between the practice of absorbing freight under the basing-point method and the practice of absorbing freight when other delivered price terms are used?

A. No.

Q. Is there any principle of economics under which any price advantage accrues to nearby customers by reason of their proximity of points of production?

A. In and of itself, none. There are certain circumstances—perhaps they might. In some cases they very definitely do not.

Q. Can you give us any examples in which the advantages of location with respect to market accrue to a seller?

A. The man who raises corn or hogs in the State of Illinois gets a better net price for them than the man who does it in Iowa if he is selling in the common Chicago market, and that would be true of corn, of oats, of wheat, or any group of those commodities. Given the quality is the same, the man who is selling coal in the Chicago

5732 market will have the advantages of his location. He sells at the common price that is set by the most expensive coal that comes in, and he gets the advantages which come to him because of the lower freight cost into the Chicago market.

I take those. That is just the sort of thing that would fit into the part of the world in which I live at the moment.

Q. If a company were contemplating building a new manufacturing plant, what would you expect the responsible officers of the company to take into account in determining where to locate the plant?

Mr. MacIntyre: I object to that. It calls for incompetent testimony.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: No foundation laid for it here.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I think we have gone into this sufficiently. I should think questions of that kind could be eliminated.

Mr. Robison: All right. I will withdraw the question.

Trial Examiner Norwood: Objection sustained.

By Mr. Robison:

Q. If in locating a new manufacturing plant the
5733 choice of location is near a large market, would the saving in transportation costs logically accrue to the customers in that market?

Mr. MacIntyre: I object. There is no foundation laid to show that the witness is competent to answer that. The question is incomplete, merely calls for, not an opinion, but a statement of fact upon the one fact that is stated.

Trial Examiner Norwood: I think you have covered those subjects heretofore. I am going to sustain the objection on the grounds it is cumulative evidence.

Go ahead.

Mr. Robison: In view of your ruling, Mr. Examiner, I offer to prove by this witness that, in his opinion, under the circumstances indicated in my last question, savings in transportation costs resulting from such a location of a plant as is there indicated would not logically accrue to the customers in the market near which the plant is located.

Trial Examiner Norwood: Counsel has his exception.

By Mr. Robison:

Q. Dr. Vanderblue, under the conditions assumed in hypothetical question A, in your opinion, what price advantages, if any, would naturally be enjoyed by nearby customers of a conduit seller by reason of their proximity to points of production?

Mr. MacIntyre: That is the same question and I
5734 object to it on the same grounds.

Trial Examiner Norwood: Objection sustained.

Mr. Robison: I offer to prove by this witness that, in response to the question I have last asked and which has now been ruled out on objection, the witness would answer that, in his opinion, no price advantages would naturally be enjoyed by the nearby customers by reason of their proximity to points of production.

Trial Examiner Norwood: Counsel has his exception. Proceed.

Off the record.

(Discussion off the record.)

By Mr. Robison:

Q. Under the conditions assumed in hypothetical question A, in your opinion, are there any economies to the conduit manufacturer on sales made to customers in more remote markets which might—

Mr. MacIntyre: I object.

Q. —offset the savings on freight to nearby customers?

Mr. MacIntyre: I object to that. That is not a subject for economic opinion. It is, therefore, not shown that this witness is competent to testify on it.

Trial Examiner Norwood: Objection sustained.

Off the record.

(Discussion off the record.)

5735 Trial Examiner Norwood. Go ahead.

Mr. Robison: In view of Your Honor's suggestion, I will make this my last question on direct examination, and, because of the ruling, I will make an offer of proof.

I offer to prove by the testimony of this witness that, in his opinion, the economies to a conduit manufacturer on sales made to customers in more remote markets which might offset the savings on freight to nearby customers result from the spreading of the overhead costs of the manufacturer and increased evenness and regularity of operations.

Trial Examiner Norwood: Counsel has the exception. Proceed.

Mr. Robison: That closes my direct examination.

Trial Examiner Norwood: Cross-examine.

Cross-Examination by Mr. MacIntyre.

Q. Professor Vanderblue, assume that sellers of a particular commodity use this method of pricing or making price quotations which is outlined in this paragraph 12 of the hypothetical question A, except that they do not use price factors of a base price plus freight; instead they use a base price plus another price factor which they work out in concert among themselves, according to a common understanding among themselves, put the two together and then

state to one and all who is to know what their deliv-
5736 ered price quotations are that the two pricing factors thus specified must be used in determining the delivered price quotations.

Is it your testimony that that is consistent with competition?

A. Say it over again. I didn't get that.

Mr. MacIntyre: Please read it.

The Witness: I don't know the difference between where they get this other price factor, out of the air, or is it a cost—

By Mr. MacIntyre:

Q. No; through a common understanding among themselves.

A. You mean if there is a monopolistic organization?

Q. No. No. I am merely assuming what I have stated here. Now, I want you to tell me whether or not that that is competition.

A. It doesn't make sense to me, but I will listen to it again.

Trial Examiner Norwood: Now, I am going to ask you to listen to those assumptions and give us your economic opinion. Answer that question, because it does make sense.

Read it.

(Question read.)

A. I don't—what I don't understand—the reason I am puzzled—I mean I don't understand where this second price factor comes from.

5737 By Mr. MacIntyre:

Q. Comes from a common understanding which is worked out in concert by the sellers concerned.

A. It is related to a cost?

Trial Examiner Norwood: You mean—

A. Is it related to a cost or is it some figure that they pick out of the air?

Q. It is an arbitrary factor that they work out in concert and use.

A. If it is an arbitrary factor which is worked out in concert, the definition—I would say by your definition it is not competitive. If they work it out in concert by definition, if a group of people get together in a back

room and fix something, it is not competitive. Now, I am trying to be responsive to your question. That is what—that was the hypothesis that you gave me, that they sat in the back room and the boys fixed it up.

Trial Examiner Norwood: You have answered it.

Q. Now, would your answer be the same if the group of sellers, in meeting assembled, through their representatives, arrived at a common understanding about the location of the basing points where the base price factor was to apply?

A. Well, now, may I ask if I am asked to speak in terms of what I know about the industry? Are you—

Q. I am adding that as an additional assumption
5738 to these which have been put to you by Mr. Robison.

A. Well, I didn't know that that was in the picture.

Trial Examiner Norwood: He says for you to assume now that it is in the picture.

The Witness: You mean he is asking me to assume that there is something else than the facts I have?

Trial Examiner Norwood: Yes; he is adding to that this other assumption and asking you if you would change your answer.

The Witness: That they all agreed—now, will you state it again?

Mr. MacIntyre: Please read the question.

(Question read.)

A. I would say that—in the first place, before I could answer that question I would have to know something of the history of the industry and as to where that base point would come up and how it had developed and what had been the evolution of the whole thing, as I don't believe you could answer that question without having the history of it.

By Mr. MacIntyre:

Q. In other words, you would want more evidence?

A. Well, the evidence that I have there, I would say that—suggest that this grew up historically and was the basis on which the other fellows came into operation; I
mean the plant in Conshohocken, the plant in Cohoes,
5739 and the plant out in St. Louis.

Q. You have assumed, on the basis of those things that Mr. Robison has put before you in his hypothesis

concerning the rigid steel conduit industry, that these basing points, basing point prices, and other factors which are used in making up delivered price quotations, are arrived at independently; is that correct? That is, independently by each seller?

A. Yes. After all, Mr. MacIntyre, this is published information. Anybody can—

Q. Now, just a moment. Are you assuming that it is?

A. No, I know it. You must publish the information under the law. You have got to file your railroad tariff and stick to it, and if you don't you will be prosecuted by the Interstate Commerce Commission. I know that.

Q. And do you just as positively know that the rigid steel conduit manufacturers use such published freight rates as a factor which they add to their base prices in arriving at delivered price quotations?

A. I only know what is in there.

Q. You assume—

Mr. Robison: You mean in the statement of facts.

Trial Examiner Norwood: Please.

By Mr. MacIntyre:

Q. You assume from what Mr. Robison put to you in that hypothetical question A that that is what they 5740 do; is that correct?

A. That is my understanding from this statement, that the price of rigid conduit in New York City is the Pittsburgh price plus freight from there, and it is the price of the man located in Conshohocken, as well as of the man located in Pittsburgh, and the man in Struthers. That is my understanding.

Q. And that the base price plus the freight, as you have used it, is the freight which is published in the tariffs; is that correct?

A. Yes. It is probably per ton or per hundred pounds, but—

Q. But by mere translation it would figure out exactly the same as the published tariffs; is that correct?

A. Approximately the same. I don't know what they do with the half cent, because somebody making up the railroad tariffs—they have certain arbitrary rules as they make them up. They did when I worked as a rate clerk.

Q. But you did not assume in your understanding of this hypothetical question A, as put to you by Mr. Robison,

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that, allowing for fractions and translation of rates from one denomination to another, such as from pounds to feet, and so on, that in addition to that there were arbitrary additions of so many percent—

A. My dear Mr. MacIntyre, I know nothing except what is there.

5741 Q. You did not make any such assumption as that?

A. I did not make any assumption. I have no basis for making assumptions. I assumed that I was taking the thing the way the situation is, and I know enough about making freight tariffs, having been brought up in a railroad man's family, and having worked as a rate clerk, and making railroad tariffs—a good many years ago, but my memory is not bad.

Q. Now, you spoke on direct examination about these separate markets being geographically separate. You recall that testimony?

A. Oh, yes, sure.

Q. In what way are they separate in so far as they express themselves in the price which is quoted in them?

A. Well, roughly speaking—now, if I may do a little geography—if it is not pertinent you can choke me off quick enough—there are certain principal consuming areas for building in this country. Roughly speaking, they will correspond to the Federal Reserve districts. I mean, I have participated in a study of building statistics for the United States some years ago when I was engaged in something else other than what I am doing now, and the articles appeared in the Review of Economic Statistics under another man's signature, but he worked under my direction.

If you take several Federal Reserve districts of

5742 building activity, the economic activities by Federal Reserve districts are quite different. Quite different. I mean the Chicago district is quite different from the New York district. The Boston district is different. And if you have different degrees of intensity in building—for example, take the Boston district. There was a time when that was the great cotton mill area. The cotton plants are vacant. Take New Bedford: It is a deserted village.

While that was happening, down in North Carolina—

Trial Examiner Norwood: Will you read that question?

(Question read.)

Trial Examiner Norwood: Can't you give a direct answer, Doctor?

The Witness: Well—may I just finish that one thing?

Trial Examiner Norwood: Go ahead.

The Witness: Now, you will get a different intensity in demand for steel conduit to build cotton mills in North Carolina at a different time, because you can build in the South in the winter time and you can't build in the North, so that you will have a different market for that commodity.

Now, the question which you asked is how would the price differ as between the two?

5743 Mr. MacIntyre: Please read the question to him. I do not believe it is exactly in that way.

(Question read.)

The Witness: Well, take the two that I gave you, the price of the steel conduit, referring back to the system here—well, the price in the Boston area—and presumably it is true of the New England area—in the Carolinas they are pretty good size groups; they are not all blanketed, but they are pretty good size groups—the price of the steel conduit in Massachusetts would be the rate, we will say, from the Pittsburgh area, which is the principal producing area, to Boston, with most of New England blanketed, and the rate would be from the Pittsburgh area down to North Carolina, let us say, Charlotte, if that mill area is blanketed. Now, what the relationship of that one to that one is I would not know without looking at the tariff. I mean—

By Mr. MacIntyre:

Q. The only expression, then, in the price would be the difference in the freight from Pittsburgh to each of those cities; is that what you are attempting to tell me?

A. Yes.

Q. That is the only way that it has expressed itself in the price?

A. I think so, by the facts that I have given.

Q. Do you agree that it is a part of generally ac-
5744 cepted and recognized economic theory that prices in a market are determined through the operations of the factors of supply and demand in that market and which are peculiar to it?

A. Yes.

Q. If the supply and demand factors in the North Carolina market, to which you have just made reference, are applying in one direction, absolutely opposite to the direction in which the supply and demand factors are carrying the forces of competition in the Boston market, to which you

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made reference, how has the difference in the flow of those economic forces in opposite directions expressed itself in the determination of a single base price applying in each of those two places at the same time?

A. Well, there isn't the same base price in the two places. There is the price at Pittsburgh—

Q. I am talking about the same base price now for North Carolina and for Boston.

A. Yes.

Q. How has the difference in the economic forces to which I have called your attention expressed itself in the base price which is named as applying for North Carolina and also for Boston?

A. Well, to supply the Boston market, or to supply the Pittsburgh market—the North Carolina market, you have got to draw on supplies under an established market-
5745 ing organization, which means that the people in Struthers, the people in Pittsburgh, the people in Conshohocken, and the people in Cohoes all have supplies. One of the most expensive and difficult things in all business to establish is to establish reliable and consistent outlets. You have all of those people selling. The man in Conshohocken will sell in the Boston area at the price which is set by what the man in Pittsburgh, farther away, is willing to sell for, plus the freight. The man farther on in Struthers has got to meet that if he is going to sell any of it.

Now, the resultant of all of the demand over the period, the whole period, and over the whole area, is going to be to set a price which will give—it has not perhaps in recent years; I don't know those facts—but will normally give a rate of return which is satisfactory on the business if the fellow is going to stay in business. It is a resultant of all prices. You don't isolate the demand and say that the demand in this area is what sets the price, or the demand in that area. It is the resultant of all the considerations at any one time.

I am not enough of a physicist to talk about resultants, but you get my point.

Q. And you say this price that is set would be sufficient to give a satisfactory rate of return to the one that sets it; is that correct?

5746 A. The man who is just willing to go into the market, in the case of any competitive commodity, when there are more than one competitor looking for it, the

price is set by him, because he is the man who produces and distributes at the greatest expense, and if he can't make any money he goes out of business, and the other people that are able to take his price—to produce and take his price and sell in that common market make a differential return.

Q. Now, do we correctly understand your testimony to mean that when that price is set that the supply and demand factors throughout the entire territory over which it applies are thrown together and considered as one—

A. It is an entirely—we are getting a little bit abstract—

Trial Examiner Norwood: Wait a minute. Let him finish the question.

Have you finished the question?

Mr. MacIntyre: Not quite.

Let us see where I am at.

(Question read.)

By Mr. MacIntyre:

Q. (Continuing) —in the naming of the price by the person or persons who set it?

A. Yes.

Q. Is that correct?

A. That is right, if you understand what I mean 5747 by all of the forces, and I think you do.

Q. And where do these forces converge?

A. They converge on the man who is just able to produce the conduit and sell it and make something to go on. The highest cost producer is the strategic person—the highest cost producer of a competitive commodity that is able to stay in business. He has got to get his ante back, and he has got to get a profit after a period of time, and all the other people do is take his price. He has the strategic price. His cost is what makes the price—in any competitive industry.

Q. And as you understand the hypothesis put to you in the hypothetical question A, you understand that that is the way it is done in the conduit industry; is that correct?

A. I understand that in the conduit industry the forces of supply and demand are operating in normal fashion.

Q. That is, they operate in the manner in which you have just outlined they operate; is that correct?

A. Yes, sir; they operate in accordance with the principles of price determination, as I have learned it over a period of years in economics.

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Q. Have you examined any of the documentary evidence in this record in the form of communications which have passed between various sellers of conduit and the minutes of their meetings?

A. No. I haven't had access. I haven't seen the 5748 record in the case.

I take it those things would be in the record, wouldn't they?

Q. Yes.

A. And I wouldn't see those.

Q. Did counsel for the Respondents who employed you to come here and give testimony suggest to you anything about making any examination?

A. No. I was asked to consider the facts given in the hypothetical question, and I have done that.

Q. If it should be found from a study of the entire record, including that documentary evidence to which I have just made reference, that the basing-point method used by rigid steel conduit sellers in determining their delivered price quotations in its adoption and in its use by the sellers of rigid steel conduit involved collusion, understanding, or agreement among the sellers, would you still say that their adoption and the use of the method could be normal and competitive?

The Witness: Mr. Examiner, I don't consider myself competent to pass upon a set of facts that I have never seen any of the evidence, and a great deal would depend upon the color, and so forth.

Trial Examiner Norwood: You are not asked to pass on the facts.

The Witness: I would like to be relieved from 5749 answering that question, because I can't.

Trial Examiner Norwood: You are asked to make assumptions.

The Witness: I can't answer that question intelligently, because I don't have command of the facts. A good deal depends upon the color of the things. You know that.

Trial Examiner Norwood: Did you have command of the facts covered by this hypothetical question?

The Witness: If I understand what Mr. MacIntyre is asking me, that if the record shows that there is collusion do I believe that there is collusion, the answer is yes.

Trial Examiner Norwood: Read the question.

The Witness: I don't know the answer.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Now, add those assumptions to the ones you have already passed judgment on here. Would your answer be the same as you have given heretofore?

The Witness: My answer would be that if the evidence shows there is collusion, there is collusion. Now, that is what Mr. MacIntyre asked me to assume. He said, "Assume there is collusion." He used the word "collusion."

Trial Examiner Norwood: Yes.

The Witness: Now, the answer—if I assume there is collusion, the answer is yes. I mean, that is very sim-

5750 ple. But I don't understand the question.

Trial Examiner Norwood: Well, now, just answer the question.

Mr. MacIntyre: I would like for him to answer the question that is stated.

Trial Examiner Norwood: You are asked if those assumptions are added—

The Witness: Yes.

Trial Examiner Norwood: —to the previous assumptions, whether or not in that case you would consider it descriptive of a competitive situation. Now, would you or would you not?

The Witness: I answered that question.

Trial Examiner Norwood: No, I do not think you have.

The Witness: I said "no." I said that because Mr. MacIntyre has used the word "collusion"—

Trial Examiner Norwood: Well, you need not explain it.

The Witness: I mean, he has misjudged the thing.

Trial Examiner Norwood: Now, read the remainder of the question, the last part of it.

(Record read.)

Trial Examiner Norwood: Now, answer that. With those assumptions, could you still say that?

5751 The Witness: If it is assumed that there is collusion—

Trial Examiner Norwood: Now, you just answer it. You are assuming that. We are asking you to assume that, so you need not remark on that at all. With those assumptions—

The Witness: The answer is, under the conditions which were then given, I would not assume that it was open, fully competitive.

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By Mr. MacIntyre:

Q. Would you consider that it is normal?

A. No, it is not normal necessarily.

Q. On direct examination you stated that you had given special attention to basing-point methods—

A. Yes.

Q. —the use of basing-point methods. Do you recall the testimony?

A. Yes.

Q. What industries were involved in the basing-point methods to which you have given special attention?

A. I have studied something of the basing-point system in the iron and steel industry.

I have read a book by a man by the name of Fetter called "Masquerade of Monopoly." In fact, I had my students read it.

I have read something of the general testimony, 5752 some of the volumes that were put out by the T. N. E. C.

I studied the price policy and problems of the automobile industry when I was employed by the General Motor Corporation as a consultant.

I have some fifteen or twenty years ago—I wrote a book on the iron industry with my colleague Professor W. L. Crum.

I have in the years that I was professor of transportation of Northwestern University, where I was, amongst other things taught a course in rate structures, and contributed the book referred to there with Mr. Kenneth F. Burgess, now a member of the Chicago bar.

I studied the freight rate structures that would affect the cement industry, the lumber industry, and other highly competitive industries putting out staple commodities such as that.

Q. What part of the lumber industry was involved in that answer you gave?

A. The Southern Yellow Pine.

Q. Was there northern hardwoods of Michigan and Wisconsin involved?

A. No.

I never studied those rate structures. I was principally concerned in working out the competitive relations—we will say, the Chicago market. There was a whole 5753 series of those cases—I. C. C. reports.

Did you make any finding as to whether or not that the basing-point method used in the cement and the steel industries, of which you made some reading—

A. I read that. No, I never—

Trial Examiner Norwood: Wait a minute.

By Mr. MacIntyre:

Q. Did you make any finding there as to whether collusion was involved or agreement?

A. No, I didn't look at it from that point of view.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Can you cite me any one of these industries to which you made reference there which uses the basing-point system where you have made investigation firsthand for the purpose of determining whether or not there was collusion, agreements, or understandings?

A. I never made those.

Q. You never made investigation?

A. I never made investigation.

I never have read the records in those cases, if that is what you mean.

Q. Have you made any study or investigation firsthand in any industry for the purpose of determining whether or not there was collusion, agreements, or understandings in such industry concerning the adoption or the use of the basing-point method there?

5754

A. No, I never have gone snooping for collusion.

Q. Are you, then, prepared to testify that any industry which is using the basing-point method has done so without the use of collusion, understandings, or agreements?

A. No, I certainly would not.

Q. Have you made any firsthand investigation of the use of the basing-point system in any industry for any purpose, or has your study of the basing-point system in any industry merely been confined to reading so-called secondary sources?

A. I should say that I have been largely confined to secondary sources, meaning publications of the Government and such works as Mr. Fetter's. That is, Professor Fetter's may be a classic, but it still is a secondary source.

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Q. That is, a secondary source of material for those who read it.

A. Yes. It is a secondary source. The only narrative that I know that is not a secondary source is the Bible. I guess that is an authority as well as a secondary source.

Q. Well, you would agree that a study firsthand of the things that are taking place would not be secondary, would it?

5755 A. It would be for me if I take Professor Fetter's word for it.

Mr. MacIntyre: Please read the question to him.

Trial Examiner Norwood: Read the question.

(Question read.)

The Witness: No. I think I would agree to that. I don't know where it leads.

By Mr. MacIntyre:

Q. On direct examination you testified about price cuts and price changes, and in that connection you mentioned a house of cards. Do you recall that testimony?

A. Oh, yes.

Q. You there were referring to reluctance on the part of the sellers or the players of the cards, so to speak, who built the houses to pull any of the supporting pegs out; is that correct?

A. That is right.

I think we have our figure of speech mixed, but I think we understand each other.

Q. Yes, I think it was slightly mixed.

And applying that to price, you mean it would be a thought on the part of either of the sellers involved that if the house of cards, so to speak, came tumbling down, applying that to the price, you mean the price coming down?

A. Sure.

5756 Q. On direct examination you testified that the acceptance of varying mill nets do not violate the principle of indifference when sellers are meeting competition where different freight rates apply. Do you recall?

A. I never said anything like that. I don't know what the principle of indifference is, but, whatever it is, I didn't say it.

Q. Do you say that that is not the substance of your testimony?

A. Well, I didn't say what you said I said, because—

Trial Examiner Norwood: What did you say?

The Witness: Mr. MacIntyre said I used something about the principle of indifference, and I never used such an expression, because I don't know what it means.

Mr. MacIntyre: Well, I believe Mr. Robison used it in some questions to you.

The Witness: No.

Mr. Robison: No. You are mistaken.

The Witness: You are the first person to use that word in this room this afternoon.

Mr. MacIntyre: Maybe so.

By Mr. MacIntyre:

Q. Well, do you understand that you testified on direct examination that you would expect sellers to accept varying mill nets—

5757 A. Yes.

Q. —in meeting competition where different freight rates apply?

A. Yes, sir.

Q. Suppose the freight rates are not different, what would you expect?

A. If they are not different?

Q. Yes.

A. Well, then, if the freight rate is the same from the Pittsburgh mill selling to a point east as it is to a point south, I would expect the price to be the same.

Q. Suppose the freight rates are the same to two different points from Pittsburgh—

A. Yes.

Q. —irrespective of direction but that with respect to those two points—

A. Yes.

Q. —at which delivered price quotations are made—

A. Yes.

Q. —if sales are made pursuant to them, the seller takes varying mill nets. Would you expect that to normally occur?

A. I think so. I don't see any difference between that and the other thing that you mentioned.

Q. Well, now, the freight rates are the same.

A. Yes.

5758 Q. You would expect the mill nets to vary under that situation. Is that your testimony?

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A. The freight rate is the same. You mean—
Q. From Pittsburgh.
A. From Pittsburgh?
Q. Yes.
A. Now, I am sorry, but in order to make your question—to give you an answer—do you mean there is only one basing point under consideration or more than one basing point under consideration? Because that is what you are coming to. That opens another question. I will be glad to pursue that.
Q. I am putting that to you as an assumption based upon other assumptions which were placed before you in hypothetical question A by Mr. Robison.
A. I am sorry, I did not understand that, because you didn't give any reference.
Q. Yes.
A. Now, you are assuming a case where the freight rate might be the same from Pittsburgh, we will say, to, say, Knoxville, Tenn., and that the freight rate from Knoxville, Tenn., is the same as—the freight rate from Chicago to Knoxville, Tenn. Is that what you are driving at?

Trial Examiner Norwood: I think you better let the counsel ask the questions.

Mr. MacIntyre: Let us have the question read 5759 and see if it is clear.

Trial Examiner Norwood: Read the question.

(Question read as follows:

"Q. Suppose the freight rates are the same to two different points, from Pittsburgh, irrespective of direction, but that with respect to those two points at which the delivered price quotations are made, if sales are made pursuant to them, the seller takes varying mill nets. Would you expect that to normally occur?")

The Witness: I wish you would spell it out for me.

Trial Examiner Norwood: At those two points is the point of shipment the controlling base?

Mr. MacIntyre: Well, we will assume that in this question, that the place of shipment is the controlling base.

Trial Examiner Norwood: Would you expect that to occur under a basing-point system there, that is described in there?

The Witness: I think not. Under the hypothesis I couldn't, although I confess I am not certain that I understand it.

By Mr. MacIntyre:

Q. Assume that a seller of rigid steel conduit—that is, considering all of these factors that are outlined to you in hypothetical question A, and also assume this, that
5760 a seller with a mill 15 miles west of Philadelphia, Conshohocken, Pa., sells to a customer in Philadelphia pursuant to a delivered price quotation; he also sells to a customer in another direction, that is, located 15 miles in another direction. Assume that the delivered price quotations to those two buyers are the same. Assume that the freight rates from Conshohocken to each of the locations of those two buyers are the same. Would you expect that the mill net recovered would be the same under the operation of competition?

A. You are assuming now –I want to be sure that I understand your hypothesis. You are assuming that the man in Conshohocken sells some in Philadelphia and some 15 miles west of Philadelphia—west of Conshohocken?

Q. Yes.

A. That is, 30-mile differential. You are assuming that the freight rate from Pittsburgh is the same—

Q. No. I am assuming that the freight rates that the seller must take into consideration in figuring his mill nets are exactly the same to the locations of each of those buyers; that the delivered price quotations are the same. Would you expect his mill net to be the same?

A. His mill—

Mr. Robison: I don't understand the question as now stated, Mr. Examiner, whether Mr. MacIntyre is withdrawing from his question his suppositions, the reference
5761 to mill nets being the same.

Mr. MacIntyre: No.

Mr. Robison: It seems to me that was in there at the time, and whether it is now out I don't know, and I am quite sure the witness does not.

Mr. MacIntyre: Well, the witness has asked so many questions I don't know whether that any assent that I have given in response to any of his questions has changed it, but I will ask the question again.

Trial Examiner Norwood: All right.

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By Mr. MacIntyre:

Q. Assume that a rigid steel conduit manufacturer with a mill located at point A—that can be anywhere, of course—that in one direction from his mill is located a buyer. Assume that in the opposite direction there is another point equi-distant from his mill and there is located another buyer. Assume that his delivered price quotations to those buyers are the same. Assume that the freight rate from his mill location, this point A, to each of those places is the same. Would you expect his mill nets to be different?

A. Not by all of the hypotheses you gave, no.

Q. Well, assume—

A. With the price set on the Pittsburgh basis on the—the same price to each of them. I mean I am assuming all those things. I can't see that you ever got off any
5762 different, except down to the same—down to the last calculation.

Q. And your answer would be the same to that question even if he were meeting competition at each of those two places; is that correct?

A. Presumably he is meeting competition because his price is set by what the Pittsburgh man will lay that stuff down for.

Q. Well, I am asking you to assume that he is meeting competition.

A. He is meeting the price that the Pittsburgh man will set it down. They will have the same price if you take the—in A or in A plus 15 or A minus 15, if they are all in the same freight rate area.

Q. Now, assume that a mill is located in Conshohocken, Pa., and that sales are made by a rigid steel conduit manufacturer at that point to customers located in Philadelphia and also to customers located equi-distant from the mill on the opposite side—

A. That is right.

Q. —and that the freight from this shipping point to each of those two places is exactly the same. Would you expect the mill nets to be the same?

A. I don't think that changes the situation—your hypothesis you gave in terms of town A. I don't see that there is any difference.

Q. You, as an economist, would expect the situa-

5763 tion to be the same at each, and that the mill nets would not vary; is that correct?

A. That is right, if all of the costs are the same. If the price is the same and the cost 15 miles each way is the same, I should expect that the mill net would be the same.

Q. Well, the cost to this shipping manufacturer is the same.

A. Yes. Well, that is what I said, yes. If the price is the same and the cost is the same either way you work it, his mill net would be the same.

Q. And you would expect, as an economist, that the mill nets would not vary in those instances?

A. Under those circumstances, under the hypothesis, by arithmetic.

Q. You spoke about price competition and about buyers' choices—or sellers' choices being present in price competition, or in a state of what you termed to be price competition when exactly the same price is quoted by all sellers. Now, assume there are more than one buyer, that there are several buyers involved to whom these price quotations are made. Where does his choice come in if you have only one price with respect to price?

A. He doesn't have any choice. The buyer isn't half so much interested in a lower price as he is in a lot of other factors in a business like this one. Where you are buying something under a contract what you want
5764 is promptness of delivery, assurance that the stuff is up to standard. You want a lot of other factors than price when you are buying material to put into a building.

Q. But it is your testimony that the buyers in such instance would not be interested in getting—assuming that all of the quotations are $5—

A. Yes.

Q. —that some of the buyers would not be interested in securing a quotation of $4.50?

A. Oh, sure, he would like to get it if he could, but that isn't the governing factor, and most of these jobs use relatively little of this stuff. No. But the thing works both ways. The thing that the business is concerned with in an industry of this kind is having supplies that can be tapped and having the physical machinery and the supplies where they will be available to people who want it; and, on the

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other hand, the man who wants to be sure that it is there. I mean, that has been the whole evolution of the marketing machinery in a country as big as ours, as compared with a country where they don't keep those supplies out and in a section where they are put to great nuisance.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Q. Well, do you say that price in such situation is not a controlling factor, possibly? Is it also your testi-
5765 mony that you do not consider it—or that, in your opinion, it is not a substantial factor with the buyer?

A. I don't think it is—the principal—I think it is not. You will not sell more pipe because you have reduced the price. You sell more pipe because the specifications of the buildings that are going on in the period of active building call for the use of more conduit.

Q. You do not believe, then—and you have answered all of these questions that have been put to you by Mr. Robison on the assumption that a reduction in price to a buyer below what others are quoting would not cause the buyer to switch the order from one seller to another?

A. He might go to the other man and ask him to cut the price.

Q. If he would cut the price—

A. You would have everybody—

Q. —after being asked for it, you still do not believe that that would cause a switch in the business; is that correct?

A. No, it wouldn't necessarily cause a switch in the business. Everybody would come to the same level and everybody would be doing business on the other price, and your price structure would all drop.

Q. You are assuming that the buyer would in the last analysis get no difference in price.

5766 A. Certainly he won't.

Q. I am assuming in the last analysis a situation where he will get a difference in price. You say that that in itself would not cause a switch in the business from one seller to another?

A. Strange as it may seem, that would not do it.

Q. I am asking you if it is your opinion that you are expressing here that it normally would not cause a switch from one seller to another in the rigid steel conduit business?

A. The answer to that question is no, it would not, if he has been doing business with someone over a period of years and knows what he is getting.

Q. That he could make a switch in the business and still not affect the price?

A. It wouldn't last very long.

Trial Examiner Norwood: Supposing he had not been doing business for many years?

The Witness: If he hadn't been doing? He would hesitate a long time. He would hesitate a long time.

Trial Examiner Norwood: But he would not switch?

The Witness: Yes, sir. You don't change your sources—

Trial Examiner Norwood: Wait a minute. That answers it. That answers it.

5767 By Mr. MacIntyre:

Q. And you have had that in mind and it has influenced you in your answers that you have given to Mr. Robison; is that correct? That is, that thought that you have just expressed?

A. It is a part of the picture.

Q. And it has played a part in all of the answers that you have made to Mr. Robison?

A. All of the answers, no. Don't tack the word "all" on to me.

Q. With respect to all of the answers that you have given with respect to that situation as it applies to the rigid steel conduit industry?

A. No. It applies to that question which you asked me. You go back and pick out "all" and say this, that, and the other, I can't answer that.

Q. You have considered that to be a part of the picture in the rigid steel conduit industry—

A. Yes.

Q. —with respect to all of the questions that you have answered as Mr. Robison has put them to you concerning the rigid steel conduit industry?

A. I will not accept any emendation that includes the word "all", because all of the questions that Mr. Robison asked I certainly don't accept. Now, Mr. Robison may know some of them that he has excepted to, but I
5768 won't accept the word "all".

Q. But when you have considered the rigid steel conduit picture as presented before you—

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A. Presented by him.

Q. —in questions by Mr. Robison you have considered that as being present in your answer which you have told me?

A. The reluctance of people to give up their business relations is one of the most important factors in an industry.

Q. And you have considered that to such an extent as being present in the rigid steel conduit industry, but it would not switch buyers from one seller to another?

A. I have considered that.

Q. I mean, it is a part of the picture?

A. Oh, it is part of the picture; certainly.

Q. Assume that two or more sellers of rigid steel conduit do not intend and do not attempt to make a price quotation lower than the—that is, any one of two or more do not intend or attempt to make price quotations lower than the others in the group, and that, following that intention, they all quote exactly the same price; that is, as to the amount of money. Do you say that they have competed in price to get the business from a particular buyer or group of buyers in making such quotations?

A. By your definition saying "competed in price," the answer is that they have not competed in price.

5769 That doesn't mean that they have not competed, however, at the same price.

Trial Examiner Norwood: He did not ask you that.

By Mr. MacIntyre:

Q. Now, on direct examination you have stated that prices need not change with any specified frequency in order for there to be a market, a true market. Would you say that the answer that you were giving there applies to the situation outlined in the hypothetical question A?

A. Yes.

Q. The same answer, however, would not apply to prices involved in transactions on the Grain Exchange; is that correct?

A. I don't see why not. If I understand the question correctly, the fact that there is no—see if I understand the question. The first question was, in a condition where the price is maintained over a period of time that can be competitive. Now, in the Grain Exchange there are fluctuations hourly and sometimes momentarily. They can still be competitors.

Is that what you meant to ask me?

Q. But it is your testimony, as an economist, that you would expect prices on the—that you would not expect prices on the Chicago Grain Exchange to change frequently?

A. Not at all. I didn't say that.

Q. Or momentarily?

5770 A. Not at all. I didn't say that. You are putting something in my mouth.

Q. I am trying to find out what you mean by what you said.

A. I said that you can see a manufacturing commodity with all of the manufacturing costs such as rigid conduit—if you want to take another one and get out of this into another industry, the automobile, where you would expect the price to be made for a year and perhaps maintained over a whole selling season as it is there, and I still can say that that is competitive, that the three major automobile companies who are selling the smallest car, in normal times, are competing, and the price is held constant, and I also can say that that is competitive, and the situation on the Grain Exchange is competitive. Now, that is all I am saying or all I mean to say.

Q. Assume that rigid steel conduit manufacturers, instead of doing as they do and as is outlined to you in questions which have been put to you here, that they permit buyers to buy for future deliveries; that they make prices to all buyers so that the latter can take delivery on certain specified dates three months, three months and a half, five months, six months, or even two years from now. Would you expect that quotations made to those buyers would all be at the same level?

A. In the first place, I should not expect a commodity such as rigid conduit, which is difficult to store and is

5771 not a raw material in another industry, and where the principal part of the market does not come from prospective purchases and sales to holdings of a grain elevator or wheat, to have anything like the same pattern, and I should think that it is inconceivable to me that you could build up enough of a supply of rigid conduit to make the necessary deliveries because you would be chipping off the zinc, or whatever they cover this thing with—I mean the two things are so wide apart that it is not possible for

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me to make such a comparison, and I don't consider myself competent to do it. I will put it that way.

Q. Is it your testimony that it is inconceivable for you, as an economist, to sellers will sell to speculators and to others who want to buy for future delivery goods before they are manufactured or produced?

A. I can't conceive of anybody buying rigid steel conduit for a speculative fling, if you take the other side of the market.

Q. Well, forget the assumptions of Mr. Robison in his hypothetical question A, and let us think of this industry as being slightly different from the basing-point industry where, as it is assumed there, manufacturers do not sell for future delivery.

A. Well, you see, unfortunately, Mr. MacIntyre, I have been brought up to look at facts, and I can't conceive of such.

Q. Yes, but you don't know any facts as concerns
5772 the rigid steel conduit industry except those outlined?

A. I know the way it is sold; I know how much it is sold for; and I know how much you buy when you buy rigid steel conduit.

Q. You are relying upon some facts other than the hypothetical question?

A. I am relying only upon what is in there. That is all I know.

Q. I am asking you to forget what is in there for a moment and answer this question.

A. All right, then, you make a hypothetical question.

Q. Assume that buyers of conduit make an effort to buy from sellers for future delivery ranging from one month to two years. I am asking you is it conceivable on your part as an economist for sellers to accept orders from buyers for such future deliveries before the goods are produced?

A. It is not inconceivable.

Q. Well, if they accept orders for future delivery, would you expect that all sellers would accept from all buyers orders covering the same price for the next two years?

A. You mean that the spot price was the same?

Q. Yes. I am asking you to forget what Mr. Robison has put to you in the hypothetical question now and just consider this as any industry. Would you expect that to be a normal situation—

A. No.

5773 Q. —for them to make for the next two years all price quotations exactly the same?

A. No. No.

Q. How often would you expect for them to change those prices with respect to the deliveries which would take place over the period of the next two years?

A. Whenever the underlying conditions as specified in hypothetical question—

Q. I am asking you to forget those.

A. Well, I can't.

Mr. Gilpatric: I object to the question, then, because it is too indefinite. If he has got to forget the facts in the hypothetical question, what are the facts, then, on which he is to formulate an opinion?

Trial Examiner Norwood: I think he has stated them. Objection overruled.

By Mr. MacIntyre:

Q. Can you answer that, Professor?

A. I can't possibly answer the question.

Q. On direct examination you stated that you would expect quoted prices on a standardized commodity to be substantially the same; do you recall that?

A. Yes, sir.

Q. Now, I will ask you if you consider it—well, strike that.

5774 I will ask you if it is your testimony that it is a part of recognized and accepted economic theory that bids of all sellers of a homogeneous or standardized commodity will not only tend to become the same but will become absolutely uniform and identical for all sellers and remain so at rigid levels for a period of one year or more without change?

A. May I ask what the commodity is? Any commodity?

Q. Any manufactured and homogeneous commodity.

A. It might. It might only last that way for months. Depends on how quick the turnover can be.

Mr. MacIntyre: Will you read the question to the Professor?

Trial Examiner Norwood: Read it.

(Question read.)

A. The answer to that question is "no."

Q. Is it your testimony that the portion of economic theory to the effect that prices in a market will become uniform applies to situations where prices are absolutely

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uniform as contrasted and distinguished from those situations where they merely tend to become uniform?

A. You seldom get a situation of absolute uniformity, except in chocolate bars and stick candy or chewing gum, something of that kind. You may get absolute uniformity, but by and large they come to pretty close uniformity in a non-style item.

Q. I am talking about absolute uniformity, now, in
5775 the amount named in the price. Is it your testimony that economic theory concerning the uniformity of price goes that far?

A. No.

Q. How far does it go?

A. Oh, within the reasonable limits of jiggling between people sometimes on some commodities. Depends. Sometimes you will get the absolute uniformity; sometimes not.

Q. But you are not likely to get it and keep it for a period of a year or more; that is, absolutely uniform?

A. Oh, yes, you are on something with no style in it, and, going into a producer's good—certainly you do with automobiles for a whole season and one that has got a whole lot of style in it.

Q. For a number of sellers who sell homogeneous automobiles?

A. I don't know whether we are competent, either of us, to decide whether the Ford and the Chevrolet and the Plymouth are homogeneous or not.

Q. Do you consider them homogeneous articles?

A. I consider them, yes, interchangeable in price.

Q. Have you recognized, or have you attempted to state that you recoghize, that the prices on those three articles are absolutely the same?

A. They are not absolutely the same, but they are substantially the same, and if you get one of the prices
5776 out of line with the other you will find that the buyers will notice the difference and the prices will come back into line again.

Q. But you admit that they are not absolutely the same?

A. Oh, no, they are not absolutely the same article. Some of them put an extra gadget on, don't you know, but they are pretty close to it.

Q. I will read you this statement, Professor:

"Although it is essential to draw a sharp distinction between sporadic and constant uniformity in fields in which price is determined by direct negotiation between buyer and seller in each transaction, there is no need for a similar distinction in the case of competitive bids."

Do you agree with that statement?

A. Will you be kind enough to read it again? I didn't know when the end was coming.

Trial Examiner Norwood: Read it.

(Question read.)

A. I don't know what it means. It is taken out of its context, and I can't guess what it means.

Q. In other words, that as a complete sentence, as a complete thought, you cannot decipher?

A. No, I don't understand what it is driving at.

Q. When were you employed by Respondents to come here and give testimony?

A. Some time in the fall. I can't give you the
5777 exact date because I didn't think I would be asked the question. It was some time in the autumn. I was asked whether I would do it, and I said I didn't know whether I had time or not. I finally agreed to it.

Q. You have either been paid or promised pay for the testimony you are giving here?

A. Certainly. I expect a per diem.

Q. And you consider that part of your qualifications upon which you have based your testimony here to be knowledge which you have gained and other factors which became crystalized within you during the period of time when you have acted as a consultant economist for various American corporations?

A. I have done very little of that.

Mr. MacIntyre: Well, read the question.

The Witness: You say various ones. I have done very little of it, as a matter of fact. But I have done it on occasions.

Mr. MacIntyre: Let us read the question.

(Question read.)

A. That is right. Yes, that is a part of my general background.

Q. And the principal part of your—of the teaching of economics in American institutions has been in the business schools rather than in the liberal art schools; is that correct?

5778 A. That is correct, sir. I have been professor in Northwestern University, School of Commerce, and in the Harvard Business School. I have been professor of Business Economics in both places.

Mr. MacIntyre: I believe that is all.

Trial Examiner Norwood: Redirect.

Mr. Robison: I have no questions on redirect examination.

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Trial Examiner Norwood: Thank you, Doctor.

The Witness: All right. Thank you, sir.

(Witness excused.)

Mr. Gilpatric: Your Honor, I find that yesterday in introducing Professor Wernette I did not formally tender him nor was he formally accepted as an expert witness. If that is a defect, I would like to—

Trial Examiner Norwood: Let the record show that Professor Wernette was accepted as an expert, and I so stated, but it may have been off the record, but anyway he was accepted in accordance with the statement there, yes.

Mr. Gilpatric: Now, Mr. Examiner, this concludes the Respondents' case, with the exception of whatever showing we will attempt to offer if we decide it is necessary, after finishing our examination of the invoice material which the Counsel for the Commission has offered, and also on the subject of competitive bidding, after we have had a
5779 chance to talk to Mr. MacIntyre about a stipulation we have submitted to avoid that proof.

5782 Mr. MacIntyre: It is agreeable to me for them to offer their proof with respect to bidding, and for that matter even their invoices up to the time that I complete my offer of factual evidence in rebuttal to the material that they have put in.

Mr. Austin: Good boy. That is fine.

Trial Examiner Norwood: Now, when will you be ready to begin? As I understand that, then, Respondents have rested, with those conditions.

Mr. Austin: That is right.

Mr. Gilpatric: Yes.

Trial Examiner Norwood: And with that understanding all around, now, when will you be ready to begin with your factual evidence?

Mr. MacIntyre: I believe that I could start with my factual evidence by Monday morning, March 2. That is one week from next Monday.

Trial Examiner Norwood: Hearing is recessed—Is that agreeable to both counsel?

Mr. Austin: It is with me.

Trial Examiner Norwood: —recessed to recon-
5783 vene in the Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., Eastern War Time, on Monday, March 2, 1942.

(Whereupon, at 4:55 o'clock p. m., February 19, 1942, the hearing in the above-entitled matter was adjourned.)

5786 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on February 19th, hearing in Docket 4452 is now reconvened in Room 532, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., on the 2d day of March, 1942.

As I understand it, Respondents have rested subject to the right to put in some documentary evidence there, and if they are not ready now—What is the situation as to your documentary evidence?

Mr. Robison: Well, I think we will probably be ready to put that in tomorrow, or at least by Wednesday. There was a letter sent to Mr. MacIntyre, and we want to confer with him before it goes in.

5794 (Documents were thereupon marked for identification "Commission's Exhibits Nos. 749-A to 749-D, and 750 to 758," inclusive.)

Mr. MacIntyre: I call as the next witness Mr. Bieger.

Trial Examiner Norwood: Have you been sworn, Mr. Bieger?

Mr. Bieger: Yes—no, I haven't been sworn.

WILLIAM J. BIEGER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Bieger, will you please state for the record the nature of your occupation and your present position in that occupation?

5795 A. I am the assistant desk chief in the rate branch in the Bureau of Traffic, Interstate Commerce Commission, in the official section handling rate matters on traffic originating in what is described as Official Classification territory; roughly, north of the Ohio River, east of the Mississippi River, and north of the Potomac River.

Q. Would that also include traffic originating at border points of that territory, such as St. Louis?

A. It would, if the traffic moved through this territory. Anything moving east of St. Louis would be within our

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jurisdiction. If it moved west it would be in a different section. If it moved through St. Louis from the South to our territory it would be in our jurisdiction.

Q. And how long have you been in that position?

A. Well, I have been assistant desk chief for about five years, but doing the same work since 1926, 16 years.

Q. And prior to that what did you do?

A. I was five years as a tariff examiner in the same Bureau.

Q. And prior to that?

A. Four years in the War Department doing substantially the same work.

Q. That is, handling freight rate matters for them?

A. Yes, land grant deductions.

Q. And prior to that, what was your occupation?

A. Well, I had 14 years' experience of various kinds for the railroads, the Wabash principally, East St. Louis.

5796 Q. And the total of all that experience is how much in terms of years?

A. About 39 years. The early part of that did not relate to rate matters. Of course, I worked in various capacities from a messenger up. I was quite young when I started.

Q. But you have had 25 years or more—

A. Yes, I have.

Q. —in the handling of freight rates?

A. Yes, I have.

Q. And in this position that you have held for the past 16 years with the I.C.C. handling freight rates in this territory that you have outlined east of the Mississippi, have you had anything to do with rates in that connection on rigid steel conduit, conduit pipe?

A. Well, recently we compiled a statement on it.

Q. Yes, but that is included in your—

A. Prior to that time?

Q. In your regular duties the handling of those rates fall in with all your other duties; do they?

A. Oh, yes. Our duties consist of handling any matter, obtaining the correct freight rates for any Government department or any bureau for the Interstate Commerce Commission or any Congressman on any traffic whatsoever, any weight, or any date, as long as it originates within that territory.

Q. Now, Mr. Bieger, I am showing you Commis-
5797 sion's Exhibits, for identification, 749-A to D, and 750 to 758, inclusive, which purport to be tabulations of rates on conduit steel pipe from particular origin points specified in those tabulations to certain specified destinations shown on those tabulations.

I will ask you to state whether or not you recognize these tabulations as any with which you have—I mean as any which you have seen heretofore.

A. Yes, I do. I recognize those as either being compiled by myself or under my direction and control and audited by myself.

Q. Well, those were not actually compiled by you but by others under your direction and general supervision. Have you made verification of those rates?

A. Well, I checked them here and there, and they are all correct, to the best of my knowledge and belief.

Q. Do you vouch for the accuracy and are you satisfied with the accuracy of all of the rates specified in them?

A. I am satisfied in my own mind they are correct because I know the men that check them, and they engage in no other business than checking rates like this daily for the Government, and have been for a period of time; all good men.

Q. Are there any in any of these Commission's Exhibits 749-A to D which have not been verified by you?

A. No, there are not. I have worked them all personally.

5798 Q. And you have verified by rechecking—

A. Partially rechecking, yes.

Q. —the rates which appear in Commission's Exhibits, for identification, 750 to 758, inclusive; is that correct?

A. Yes, sir. Yes, sir.

Q. And you are satisfied as to the correctness of the rates in all of the tabulations?

A. I am satisfied in my own mind they are correct rates.

Q. And for each of the rates shown the tariff authority is cited—

A. It is.

Q. —where it can be found?

A. Either directly across from it or hooked up by a reference to it.

Q. And those tariffs are on file in the I.C.C.; are they?

A. Yes, they are available to—there are two files over

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there. One is the official file and the other is the public file available to the public.

Q. So all of these rates specified in these tabulations could be checked by these Respondents here?

A. They could be, any time they desire.

Q. That is just a matter of a few blocks up the street here; is that right?

A. Yes; Twelfth and Constitution, fourth floor.

Mr. MacIntyre: If your Honor please, I now offer
5799 in evidence Commission's Exhibits 749-A to D, and Commission's Exhibits 750 to 758, inclusive, as tabulations of freight rates on rigid steel conduit from the origin points shown in each of the tabulations to the destinations shown in each of the tabulations.

Mr. Stewart: I would like to have a statement of the purpose for which the offer is made. I was just trying to find out whether it is in rebuttal.

Trial Examiner Norwood: Yes. Why are you offering those?

Mr. MacIntyre: If Your Honor please, the information contained in those tabulations directly rebuts testimony which was given by witnesses called for the Respondents concerning the application of freight rates on rigid steel conduit from the original points in the Pittsburgh territory and the like.

Mr. Stewart: Of course, that doesn't tell us anything.

Mr. MacIntyre: I can't point to each line of the testimony where people, such as Mr. Newman, and a number of the others, testified about application of freight rates, but numbers of them did testify about the application of freight rates, and this directly rebuts that testimony.

Mr. Robison: Mr. Examiner, I think I am safe in saying that there is no evidence that has been introduced
5800 in evidence by the Respondents concerning the amount of the freight rates from any point to any other point. And neither can I recall any other evidence introduced by the Respondents of which tabulations of this sort would be rebuttal. I think the evidence is not rebuttal evidence on which we are supposed to be engaged at this time, and I object to it.

Trial Examiner Norwood: Do you put this in to show deviation between the actual rates and the rates in their books of freight adders, so-called?

Mr. MacIntyre: It does that, but it does more, which is directly rebutted, and that is the testimony of the wit-

nesses which have been put on to the effect that freight rates from Pittsburgh, from certain other points, are exactly the same to destinations scattered around over the country.

Trial Examiner Norwood: Well, now—

Mr. Stewart: Well, now, what happened was this—

Trial Examiner Norwood: I will ask the witness: You testify, to the best of your knowledge, understanding, and belief, that those are correct tabulations; do you?

The Witness: Yes, sir.

Mr. Stewart: Well, the only time that question arose was when Mr. MacIntyre in his own case chose to ask his own witness about what the rates were in the Pittsburgh district. See, now, what he is undertaking to do is impeach his own witnesses, but nobody testified to any par-
5801 ticular freight rates. That is what this goes into. They—

Trial Examiner Norwood: I shall receive those in evidence with the understanding that it will not be used to contradict anything that is not in the evidence.

Objection overruled. Received as marked.

COMMISSION'S EXHIBITS NOS. 749-A to 749-D, and 750 to 758, inclusive, were offered and received in evidence.

Mr. Robison: Well, do I understand by that ruling, Mr. Examiner, that, even though, as Mr. Stewart has stated, the original evidence was drawn from witnesses called on the Commission's case by Mr. MacIntyre, nonetheless these exhibits are now to be accepted in evidence for the purpose of controverting what those witnesses testified to?

Trial Examiner Norwood: Something that his own witnesses testified to?

Mr. Robison: Yes.

Trial Examiner Norwood: No, I would not consider them for that. No.

Mr. Stewart: That is the only place they came in.

Mr. MacIntyre: I certainly disagree on that.

Mr. Stewart: Well, you may be right. I don't remember.

Mr. MacIntyre: There were a number of witnesses
5802 called, testified about freight rates, and they were called by the Respondents, and this rebuts their testimony.

Trial Examiner Norwood: I think they are material to show any deviations from the freight adder books and the—

Mr. Stewart: Oh, yes.

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Trial Examiner Norwood: —other, and if the information there is used for anything else I shall consider it—

Mr. Stewart: Yes.

Well, off the record, if I may.

(Discussion off the record.)

Trial Examiner Norwood: Proceed.

(Documents were thereupon marked for identification "Commission's Exhibits 759 and 760.")

By Mr. MacIntyre:

Q. Now, referring to Commission's Exhibits 749 to 758, inclusive, Mr. Bieger—strike that question.

Mr. Bieger, now, referring to Commission's Exhibit, for identification, 759, which is a certification from the I.C.C. concerning attached freight rate tabulations, or freight tariffs, I call your attention specifically to the tariffs attached thereto, I.C.C. No. 3607.

A. That is Agent B. T. Jones' I.C.C.

Q. Agent P. T. Jones—

A. B. T. Jones.

Q. B. T. Jones. —effective October 15, 1941, and 5803 the supplements—and supplement No. 1 to that tariff, effective December 12, 1941.

Now, I would like for you to tell us if you can, Mr. Bieger, as to whether or not you have made an examination of the tariffs of the I.C.C. for the purpose of determining how far back those rates shown in those particular tariffs that I have just cited to you go in their application, giving us the first date on which they became effective.

A. That is, you mentioned this 3607 and this 688 here, Curlett's. One is from Trunk Line and one is from C.F.A.

Q. Yes. I neglected to cite also I.C.C. No. A-688.

A. Agent Curlett, W. S. Curlett.

Q. Yes. Will you tell us as to that also?

A. Why, January 8, 1941. They were new rates in those tariffs. They brought out rates never before in effect, point-to-commodity points.

Q. That is, effective as of January 8, 1941?

A. Yes, sir.

Q. And they have been in effect without change in rates since then?

A. To date.

Q. Down to the date shown on these tariffs?

A. That is right. They are in effect today. There haven't been any changes up to date.

Q. And that would particularly be true as to the 5804 Utah destinations?

A. That is all we checked out of those, yes. Utah destinations have three—I say applies to three States, but we only check rates as to destinations. It applies to Utah, Colorado, and Wyoming. We were only interested in Utah.

Mr. MacIntyre: If Your Honor please, I now offer in evidence Commission's Exhibit, for identification, 759, being a certification as to the correctness of certain I.C.C. tariffs attached thereto.

Mr. Robison: Mr. Examiner, it doesn't appear that this offered evidence is in rebuttal of anything introduced in the Respondent's case. I object to it on that ground and on the ground that it is incompetent and irrelevant.

Mr. MacIntyre: They are offered for the same purpose and to meet the same type of testimony that caused me to offer Commission's Exhibits 749 to 758, inclusive.

Mr. Robison: That is pretty indefinite. It seems to me that doesn't show it is in rebuttal of anything we have had on Respondents' case.

Trial Examiner Norwood: Now, these are—are they actual official rates that were issued by—

Mr. MacIntyre: They are actual official tariffs now on file at the I.C.C.

Trial Examiner Norwood: Now—

Mr. MacIntyre: And they are certified by the 5805 Interstate Commerce Commission as to the correctness.

Trial Examiner Norwood: Now, they may be retained here in this case, or will they have to be—

Mr. MacIntyre: Yes. I am offering them in evidence now.

Mr. King: I would like to ask the witness a question before I object.

Trial Examiner Norwood: Just a moment.

Now, I see that they are rather voluminous. Can't they be referred to and received as physical exhibits here to prevent considerable expense in having those printed if the case goes up?

Mr. MacIntyre: I would agree to that. I think that that should be done.

Mr. Stewart: That is, assuming that they are admissible.

Trial Examiner Norwood: Yes.

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Mr. Stewart: The practical solution is that they are just offered with the privilege of reference.

Mr. MacIntyre: Yes.

Mr. Stewart: That leaves the question, of course, as to whether—

Trial Examiner Norwood: Now, are there any further objections?

Mr. Stewart: Mr. King.

5806 Mr. King: I would like to ask the witness a couple of questions.

Trial Examiner Norwood: Go ahead.

Examination on Voir Dire by Mr. King.

Q. I notice Agent Kipp apparently has published two of these three tariffs; is that correct?

A. Why, he has published several of them.

Mr. MacIntyre: Well, if you could show them to the witness—

Q. Curlett is the other tariff agent; is that correct?

A. Well, no. Jones, too, you see. Kipp published those rates that start at Chicago, and Jones published those that start at Pittsburgh, and we also had some in points east of that in Curlett's tariff. He is Trunk Line Freight Association. He is freight agent for three territories, Western Trunk Line, C. F. A., and Trunk Line territory.

Q. What lines are parties to Western Trunk Line territory?

Mr. MacIntyre: If Your Honor please, I object to that.

A. It will show right in the front the participating carriers. They are all listed.

Q. Are they all of the major carriers in the United States?

A. Oh, no.

Q. What percentage of them?

5807 A. They would be the major carriers in their respective territory. They would undoubtedly have the major carriers in their respective territory. It has a limited application. It says it applies between Ogden, Salt Lake City, and a group of points taking the same rates and certain points in Western Trunk Line territory and border points, Memphis a border point, St. Louis a border point, and Chicago is directly in it, and Iowa groups. Duluth is right in the center of it.

Q. In other words, the documents you hold in your hand apply only to a very limited area, is that correct, when you take the United States as a whole?

A. They are applied to the area shown on the title.

Q. That is a limited area?

A. That is a limited area. It is shown in the tariff.

Mr. King: That is all.

I object to them, if Your Honor please, because they are picked to cover only a very few destinations. The freight adders and schedules that these people introduced—or that Mr. MacIntyre introduced affecting the rigid steel conduit industry as a whole covered all points where rigid steel conduit is sold, which it is obvious from reading those and from an examination of this witness that they do not.

Trial Examiner Norwood: Well, he has some more over there. Maybe they can cover the others.

Objection overruled.

5808 Mr. Robison: Your Honor, I don't want the nature of my objection lost by reason of Mr. King's examination.

Trial Examiner Norwood: Yes.

Mr. Robison: I still press my objection that this evidence now offered is not rebuttal to anything that has been offered on the Respondents' case. If anything it is merely an attempt to bolster evidence that was offered in the Commission's case.

Trial Examiner Norwood: I shall overrule the objection and receive the exhibit as a physical exhibit. It will not be reprinted if the case goes up to the courts.

COMMISSION'S EXHIBITS NOS. 759 and 760, were offered and received in evidence.

Mr. MacIntyre: That is all from the witness. You may cross-examine him.

Trial Examiner Norwood: Cross-examine.

Mr. Stewart: I have none.

Mr. Robison: I have none.

Cross-Examination by Mr. King.

Q. Mr. Bieger, who picked the destinations for you covered by those tariffs? Mr. MacIntyre?

A. No.

Q. Who?

5809 A. Mr. White.

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Q. He told you what destinations he wanted.
A. He asked me to request for a check of these rates.
Q. Who is Mr. White?
A. He is employed in some capacity with the Federal Trade Commission. I don't know exactly just what his position is.
Q. Just what did he tell you he wanted?
A. He gave us a statement of origins and destinations and—
Q. Did he tell you what purpose he wanted to use them for?
A. No, he didn't. That wouldn't be of any interest to us. He is an employee of the Government, and we are supposed to check rates for all Government departments, Congressmen, and I. C. C. Bureaus.
Q. Just what did he tell you when he gave you the list—
A. He said that "I want a statement compiled of freight rates on a certain commodity and give me those—"
Q. What were those commodities? Do you remember?
A. It wasn't "commodities." It was one commodity, but it was a rather vague description, and I said that I believed it was wrought iron steel pipe, and he agreed that it was wrought iron steel pipe conduit—conduit pipe—I will get it straight. Wrought iron or steel conduit pipe.
Q. Well, is that all—
A. That is what the freight rates that we checked apply on.
Q. Between the destinations that he gave you; is 5810 that correct?
A. That is correct.
Q. Now, do those tariffs only cover conduit, or do they cover other items as well?
A. No, there is no tariff involved that applies on conduit only, and most of them apply on diversified commodities, but some of them only apply on iron and steel articles, but none of them apply on conduit only.
Q. Well, I notice also that there are some joint through rates listed in those tariffs; is that correct?
A. They would have to be, for example, from Pittsburgh to Utah. There is no railroad that runs from—single line that runs from Pittsburgh to Utah. There would be quite a few carriers in a haul of that kind.
Q. Have you had any experience in the policy of the Interstate Commerce Commission behind rate making?

A. No. The Commission, as I understand it—that is beyond our duties—does not, as a general proposition, make rates, except on review. And—

Q. My question, of course, is directed to on review. Do you have any experience with the commodities—

A. No, I do not have.

Q. How long did it take you to make these compilations that you have introduced?

A. Well, I can't say—we have—that is a matter of
5811 record there, but—

Q. No, I don't mean the tariff. I mean the compilation, sir.

A. That is what I am referring to, sir, because I had nothing to do with making the tariff.

Let us see. It took me, I think, four days on the Utah. I worked the Utah. That was the most complicated, and it is—

Q. The State of Utah?

A. The rates to the destinations in Utah. As complicated a rate structure as I can find. Took me four days.

Q. It took you four days?

A. I think it did.

Q. You know, don't you, that traffic men are entitled to practice before the Interstate Commerce Commission, and do practice?

Mr. MacIntyre: I object to the question. It has nothing to do with these matters that have been presented here on direct examination.

Mr. King: Well,—

Trial Examiner Norwood: If he has any use for that information, I will let it in.

Mr. King: Because Mr. MacIntyre very carefully established—or tried to establish by a prior witness that was
supposed to be a so-called rate expert that traffic men
5812 were wholly unnecessary, which was the most ridiculous premise that I ever heard of. This is a man from the same Commission, and I think I am entitled—

Mr. MacIntyre: Not necessarily, though, for what purpose.

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. I understand, sir, in a vague sort of way that the Commission has various standards and requirements for practitioners before it, but what they are I don't know. I never had any reason to go into that matter.

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By Mr. King:

Q. Well, in your opinion as an expert, to the extent of your knowledge, you do know, don't you, that railroads and traffic people that ship, all shippers, do hire traffic experts; don't you?

A. Oh, yes, I do. Yes, indeed.

Q. Did you do this work by yourself, or did you have somebody help you?

A. Why, I don't know how to answer that. Mr. White, who made the request, sat at my desk. I got the tariffs and called them out to him. Sometimes he wrote them down and sometimes I wrote them down. I would say I did all the work.

Q. You did all the work, I understood you to say, to destinations in Utah?

5813 A. That is right. That is all I am speaking of now; just to Utah.

Q. Well, is that all that—

A. No. The names of the men who compiled those under my directions are on each individual sheet.

Q. My question is directed to determine how many men all told worked on this.

A. Well, I think the sheets will speak for themselves, but, as I remember, four besides myself.

Q. And how long, the total time, did they take?

A. They took each about a day apiece. That was four days. And my four make eight. Somewhere between eight and ten days.

Mr. King: Thank you.

Mr. Stewart: I would like to ask a question or two.

Trial Examiner Norwood: Proceed.

By Mr. Stewart:

Q. Is it correct that different traffic experts differ on correct rates?

A. The interpretation?

Q. Yes.

A. Why, yes, it is true that they do.

Q. Now, will you tell us exactly what commodity you were instructed to tabulate rates for?

A. Well, originally on rigid conduit pipe.

Q. All right. What do you—

5814 A. I didn't find such a thing in the classification. The classification says to describe these articles according to a description in the classification, or I suggested

wrought iron or steel conduit pipe, and we had a consultation between myself and my superior and Mr. White of the Federal Trade and we all agreed that that was the proper traffic description of rigid conduit pipe.

Q. In other words, whether you are right or wrong, the fact is that these rates that you have compiled cover rates on wrought iron or steel pipe?

A. Conduit pipe.

Q. Conduit pipe?

A. That is right. That is perfectly correct.

Mr. Robison: I would like to ask a question.

By Mr. Robison:

Q. As I understand it, your compilation has reference chiefly at least to rates from Pittsburgh to points in Utah; is that correct?

A. Well, I wouldn't say that was principally. There are some destinations possibly in other points, but they were the longest haul and the most difficult rates. But I didn't count all the rates, so I can't answer that question. To Utah it was entirely from Pittsburgh and Chicago. That was the only origins. And from various other origins we had almost an equal amount.

5815 Q. Well, now, you mean that the work that you did was concerned only with rates from Pittsburgh?

A. And Chicago.

Q. And Chicago?

A. To points in Utah.

Q. To points in Utah?

A. Yes, sir.

Q. How many points in Utah?

A. It seems to me there is a record of about fifteen common points. That is the point that takes the same rate as Ogden and Salt Lake City. I would judge from twenty to thirty, but I could count them there.

Q. That is close enough for my present purposes.

A. Yes.

Q. Now, did you see some of the work that was done by the other four who worked on these?

A. Yes. I went further than that. I not only watched the tariffs that they used, but I made sure that the compilation didn't have a rate two points higher, and when you examined it carefully it would only apply by a circuitous route, and where an individual line had a lower rate by a direct route. I watched that carefully and got the tariffs

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out here and there, and I found no errors in the rates that I checked, but I didn't check them all.

Q. Now, did that work which they were doing and
5816 which you checked in that way have to do with rates from other points of origin than Pittsburgh and Chicago?

A. As near as I can remember, it did.

Q. Do you remember what those other points were?

A. No, I don't.

Q. Can you tell by looking at the sheets?

A. Yes, I can.

(Mr. MacIntyre hands a document to the witness.)

By Mr. Robison:

Q. And would you, as you go along, give us both the point of origin and point of destination?

Mr. MacIntyre: I object to that as duplication. The tabulations themselves have that information on them. There is no need of reading the tabulations into the record. The witness can refer to which ones show a great number of origin points to a great number of destination points, but that is about all that is on the tabulation.

Trial Examiner Norwood: Would that be satisfactory?

Mr. Robison: We have not seen these tabulations, Mr. Examiner. I am trying to find out what they are all about, what bearing they may have.

Mr. MacIntyre: If they want to take the time with it, I have no objection. I just want to point out that the information already appears in the tabulations.

5817 A. To follow that it would be easier for me to proceed in this manner: To have a picture of this, the territory is described as Official Classification territory, and the destinations are always the same, outside of Utah, and they start with New York, Brooklyn, jump over to Buffalo —they tried to spread them out apparently to get representative points of some size—and from Buffalo to Washington, D. C., Baltimore, Md.—

By Mr. Robison:

Q. To interrupt you, does this cover various points in Official Classification territory?

A. Yes. These are the destinations.

Q. Destinations.

A. All the sheets—each sheet has a different origin, and each destination will be the same on every sheet.

Q. That covers a part of your destinations.

Now, what are the corresponding points of origin to those destinations?

A. Well, he starts at Cohoes, N. Y., Pittsburgh, Pa., Moundsville, Pa., St. Louis, Mo., Struthers, Ohio, Chicago, Ill., Conshohocken, Pa., New Kensington, Pa., and Butler, Pa.

Q. Now, what other points of destination are included, if any, than those which you now mentioned; that is, various points in Official territory and points in Utah?

A. None.

5818 Mr. Robison: That is all.

Mr. Stewart: May I ask the witness—

By Mr. Stewart:

Q. Will you tell us exactly what Mr. White said to you when he came to you as to what he was trying to get?

A. Yes. He says, "We got a statement of rates here. I would like you to get them."

I says, "See the boss."

He says, "O. K. We will do it."

Q. Was that a written memorandum that he gave you?

A. Let's see. Yes, he had it written down. I think it is a matter of record. All our requests for work are filed away.

Q. In other words, the scope of your inquiry was that defined by Mr. White's memorandum?

A. Yes. All our work is done by requests, and we follow the requests.

By Mr. Welch:

Q. Did he tell you why you were to select the State of Utah?

A. No, he didn't give me any information outside the work I was to do.

Q. Did you ask him why?

A. No. I had plenty to do with my own work without worrying about that. It's a headache to check those rates to Utah. If anybody don't believe it, let him try.

By Mr. Stewart:

5819 Q. Well, I gather that you would agree that there is the possibility of a difference of opinion as to the proper rate to Utah.

Mr. King: It is self-evident.

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A. It may be. Certainly not since January 8, 1941, the point-to-point rate. Prior to that time it was a cross-word puzzle. It certainly wouldn't be since January 8, 1941. A seven-year-old child could read the tariff and understand it.

Mr. Stewart: That is all.

Redirect Examination by Mr. MacIntyre.

Q. Now, Mr. Bieger, in response to questions asked you by Mr. Robison, you have named certain destination points and in that connection you mentioned New York, Brooklyn, Buffalo, and Washington.

A. Yes.

Q. You did not mean in answer to further questions of his that those were the only destination points that were involved in these rates shown on these tabulations, did you?

Mr. Robison: Mr. Examiner, it was perfectly clear. He summed it up by saying that there were various points in Official Classification territory.

Trial Examiner Norwood: Yes.

Mr. Robison: Now, this is just needless repetition of what the witness has already said. Mr. MacIntyre has
5820 contended that the exhibit speaks for itself.

Mr. MacIntyre: I did.

Trial Examiner Norwood: I thought of that myself. Answer that question.

A. What I intended to say, if I did not, is that they were destinations in what we call Official Classification territory, extending, roughly, from Boston, Mass., to certain points in Virginia, then west through Wheeling, W. Va., as far as St. Louis, Mo.

By Mr. MacIntyre:

Q. In other words, covering that territory.

A. Yes; representative points.

Q. I also understood that in response to one of the questions asked you by Mr. Robison that you told him that with respect to these rates to Utah your recollection was that they were only shown from Pittsburgh and Chicago.

I now call your attention to Commission's Exhibit 749-D. Would you say that shows something additional to what you told Mr. Robison that it shows?

A. Yes. I was mistaken on that, and I retract that. Those are since January 8, 1941. That was my mistake.

Q. And the rates to those points in Utah are shown from Butler?

A. That is right.

Q. New Kensington?

5821 A. That is right.

Q. Moundsville, Struthers, Conshohocken, and Cohoes.

Trial Examiner Norwood: He said there were other points. Isn't that all that is necessary? The exhibits show for themselves.

Mr. MacIntyre: Well, I thought that on cross that was not necessary of spreading it on the transcript.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: That is all.

The Witness: Am I excused?

Trial Examiner Norwood: Yes; you are excused. Thank you, Mr. Bieger.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. MacIntyre: Now, if Your Honor please, I now offer into evidence Commission's Exhibit, for identification, 760, which is a certification by the I. C. C. as to certain tariffs which are attached thereto.

Mr. Stewart: For identification?

Mr. MacIntyre: It is already marked. I am offering it in evidence now.

Mr. Stewart: Well, I would like to know what the purpose of the offer is.

Mr. MacIntyre: It is offered for the same purpose that the preceding offers this morning have been made, to

5822 rebut testimony by these Respondents as to the application of freight rates on rigid steel conduit from Pittsburgh and these other points to various destinations in the surrounding territory.

Mr. Stewart: Well, I take it it is offered with the same stipulation, as to its not being incorporated in the record but merely referred to.

Mr. MacIntyre: We can consider that as offered as a physical exhibit.

Trial Examiner Norwood: Yes.

Mr. Stewart: Well, to keep the record straight, I object to it on the ground that it is not rebuttal.

Trial Examiner Norwood: Any further?

Off the record just a minute.

(Discussion off the record.)

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Trial Examiner Norwood: On the record.

I shall overrule the objection with respect to both exhibits, 759 and 760, and receive them as physical exhibits, subject to the condition attaching to 749 to 758.

Commission's Exhibits 759 and 760.

(Commission's Exhibits Nos. 759 and 760 previously received on the record.)

Trial Examiner Norwood: We will take a five-minute recess.

(There was a short recess taken.)

5825 HUGH E. WHITE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. White, will you please state the nature of
5826 your occupation and your present position in that occupation?

A. I am at present an Examiner on the staff of the Federal Trade Commission.

Q. How long have you been so employed?

A. Since April, 1922.

Q. Do you among your other duties carry on work of making examinations of various documents that are made available to you for examination here at the Commission?

A. That is a part of my work, yes.

Q. Now, Mr. White, I show you Respondents' Exhibit 292-A to 292-S, inclusive. I also show you documents marked for identification as Respondents' Exhibit 294-A to blank, being quite a pile of copies of bids.

I will ask you whether or not that you have made an examination of these documents.

A. I have.

Q. Did you ascertain during the course of that examination whether bids included in Respondents' Exhibit, for identification, 294, that is, copies of bids of the Westinghouse Company, were all listed on Respondents' Exhibit 292?

A. They were not.

Q. Can you tell us how many of the Westinghouse bids which were included in Respondents' Exhibit for identification 294 were listed in Respondents' Exhibit 292?

A. Mr. MacIntyre, I don't recognize these numbers.

5827 Q. It is all the same number.

A. The entire period covered seems to be the years 1939, 1940, and a part of 1941. There were—out of a total of 244, there were 80 listed.

Q. Do we understand you correctly, then, to say that in these bids, marked for identification as Respondents' Exhibit 294, there were 244 bids out of which there are 80 listed on Respondents' Exhibit 292?

A. That is correct.

Well, that is subject to a slight correction, because I found that there was one bid listed which was not in this for the year 1939.

Q. In other words, Respondents' Exhibit 292 had one bid listed on it which does not appear and cannot be found in 294?

A. That is right.

Q. Now, did you make any examination for the purpose of ascertaining whether that among these 244 bids in Respondents' Exhibit, for identification, 294 there were bids which involved rigid steel conduit and which were not listed on 292?

A. There were, I believe, eight or ten additional bids to the number I have given, that is, 244, which did not contain any conduit at all.

Q. But all of the 244, except eight or ten, did contain conduit bids?

5828 A. Approximately that number; and of the total only twenty of the bids covered conduit exclusively; eighty other bids covered conduit and a considerable number of other items.

Q. Now, did you make any examination—

A. Or sixty. Pardon me. Make that sixty, or a total of eighty.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. MacIntyre:

Q. Now, I will ask you, Mr. White, did you make any examination of these bids listed on Respondents' Exhibit 292 for the purpose of ascertaining whether or not that the lump sum bids shown thereon were lump sums covering items in addition to conduit, or conduit and other items?

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A. Yes. Apparently the figure indicated here, the open market value, was the same as the amount of the bid, which in a great many cases included other items than rigid conduit.

Q. Did you make any examination of the bids contained in Respondents' Exhibit 294, for identification, for the purpose of ascertaining whether bids included there showed specific amounts as bid on conduit when the bid also carried other items on which bidding was then involved?

A. I understand the question to mean whether there was a subdivision of this—

5829 Q. Showing prices of conduit and prices for other commodities on which bids were submitted?

A. No, they were not separated, as I recall it.

Q. That is, the lump sum bid is not separated?

A. That is right.

Q. But in your examination did you attempt to ascertain whether or not that the bids in 294 show prices in many instances on conduit as items and also show bid prices on other things involved in the same project?

A. Yes, I did, and, as I have said, the figure appearing on 292-A to S is the amount shown there as open market value.

Q. That is, as a lump sum bid on conduit and other items that are combined in the bid with the conduit?

A. That is right.

Q. But I ask you again, did you make any examination of the bids included in Respondents' Exhibit 294 for the purpose of ascertaining whether or not that prices other than those shown in the lump sum bid were included specifically for conduit items?

A. To answer that question I would have to look at an exhibit which—

Mr. Austin: If Your Honor please, that question was directed to whether or not he had done something; therefore, I ask that the witness answer the question without examining the document.

5830 Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Austin: Now, he can answer that question without examining any document.

Trial Examiner Norwood: Yes.

Answer "yes" or "no." Did you make such an examination for such purpose?

The Witness: I didn't examine the bids, the total of the bids, and ascertain whether they were in every case exclusively on conduit. I did examine the total of the bids and compared them with the open market value shown on Respondents' Exhibit 292-A and found that they were the same.

Mr. Austin: Now, if Your Honor please, I suggest that that answer is not responsive to the question. He has stated that he did something and that he did not do something else. The question is, did he examine those for a specific purpose, and I would like a "yes" or "no" answer.

Trial Examiner Norwood: I took his answer to mean that he did with respect to some of those but not as to others. Is that correct?

The Witness: Some of them obviously included, as I have said, other items than conduit.

Trial Examiner Norwood: Wait a minute. He asked—I shall allow the motion.

Now, he asked you if you examined those things
5831 for a certain purpose. I think you should answer that "yes" or "no."

The Witness: Let me have the question again, please.

Trial Examiner Norwood: Read the previous question.

(Question read.)

Trial Examiner Norwood: Did you do that?

The Witness: I seemed to answer that question.

Trial Examiner Norwood: No.

The Witness: I said—

Trial Examiner Norwood: Answer that "yes" or "no"; did you or not?

The Witness: Yes.

By Mr. MacIntyre:

Q. Did you find that the bids included specific prices on conduit—

Mr. Austin: Are you through?

Mr. MacIntyre: Well, strike that question and I will start over again.

By Mr. MacIntyre:

Q. Will you tell us whether or not that in the course of your examination you found that the bids show specific prices on conduit which are not listed in Respondents' Exhibit 292?

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A. You are asking me about prices?

5832 Q. That is bids I am talking about, bid prices on right steel conduit. Did you find any in Respondents' Exhibit 294 as specific bids on conduit which were not included or shown specifically in Respondents' Exhibit 292?

A. Yes, there were a considerable number of them.

Q. Is it possible through examining Respondents' Exhibit 292-A to S to discover what those prices are which were bid specifically on conduit?

A. I don't see how one could.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Cross-examine.

Mr. Austin: I have no cross.

Cross-Examination by Mr. Stewart.

Q. Mr. White, as I understand it, this tabulation or document which you have in your hand is a memorandum made and from which you testified, and your figures are predicated on exhibits, for identification, 292 and 294; is that it?

A. Yes, sir; to refresh my recollection.

Q. In other words, without a reference to these documents 292 and 294 your memorandum and your testimony is entirely unintelligible; is that right? If you don't have these documents, 292 and 294, no one would know what you are talking about?

A. That is correct.

5833 Q. Now, what is 292?

A. I don't know. They were handed to me and purported to be the bids submitted by General Electric, I believe.

Q. General Electric?

Trial Examiner Norwood: Off the record just a minute.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

The Witness: They were handed to me as data submitted by one of the Respondents, which appears to be Westinghouse Electric, instead of General Electric.

Mr. Stewart: That is all.

By Mr. Robison:

Q. Mr. White, I confess I do not at all understand what the nature of your testimony has been. Will you

tell me this regarding what you have stated concerning bids shown in 294, for identification: Is it that there are some of those bids which were on both conduit and other commodities—

A. That is correct.

Q. —than conduit?

A. That is right.

Q. And when you have said that those bids, some of them, showed specific prices for conduit, was it also true that those bids showed lump sum prices for the entire list of commodities bid on, which were less than the unit
5834 prices for the total amount of items bid on? Less than the aggregate, of course, I mean.

A. No. I intended to give the aggregate, as I have said, which was the same sum that appears on 292 as the open market value.

Q. Now, that, if I understand you rightly, was the aggregate of the unit prices applied to the quantities of the different kinds and types of commodities; is that right?

A. The aggregate of the bid as appears on the invitation.

Q. I did not get that.

A. Apparently the unit price multiplied by the different kinds of material called for, which included in some cases other things than conduit pipe.

Q. Yes.

Now, from that you got, or the bid papers show an aggregate of those unit price amounts.

A. Apparently.

Q. Is that right?

A. Apparently so.

Q. Now, did the bid also include a lump sum bid for all the products bid on which was less than that aggregate?

A. Yes. Yes, I recall there was an alternate, which in many cases was less than apparently the number of units multiplied by the unit price.

Q. And because the lump sum bid included com-
5835 modities other than rigid steel conduit, am I right in understanding what you meant by your testimony was that you could not tell what the bid on rigid conduit less than the aggregate of unit price bids on conduit amounted to?

5836 A. In some instances there were some listed here

as alternate. To what extent that was true, I don't know. I made no endeavor to ascertain to what extent that was true. What I have been saying—the intent of what I have been saying, at least, was that there are a great many items here listed on some of these invitations which were obviously not pipe, and a very large proportion in some cases which did not consist of conduit pipe, and the aggregate of those bids, when checked against 292, we found to be the same.

5837 Trial Examiner Norwood: Does that answer your question?

Mr. Robison: I think so. It is far from clear, but I think we have gotten the meaning now.

I have no further questions.

By Mr. Stewart:

Q. Well, I gather, Mr. White, from what you say that you were compelled in numerous instances to place your own interpretation on the documents, and whether you are right or wrong you are not sure?

A. I was compelled to distinguish between rigid conduit pipe and other commodities, if that is your question.

Q. My question was, You were compelled to put your own interpretation on the bids; is that right?

A. Oh, I naturally did.

Mr. Stewart: That is all.

Mr. MacIntyre: Is that all?

Redirect Examination by Mr. MacIntyre.

Q. Will you name some of the other commodities that were involved that you can recall, other than conduit, in these lump sum bids that were listed in Respondents' Exhibit 292?

Mr. Austin: Your Honor, I object to that question on the ground that Mr. MacIntyre had himself on direct brought out the question that this covered commodi-

5838 ties other than conduit, and he had entirely within his control the right to ask that question at that time. Now, there is nothing on cross which makes it permissible on redirect to bring that out.

Mr. MacIntyre: I submit Mr. Robison asked questions that this and other questions led directly to, to what Mr. Robison brought out.

Trial Examiner Norwood: Well, objection overruled.

A. That puts a great deal of strain on my memory, if I am not permitted—

By Mr. MacIntyre:

Q. Well, can you recall some of the items?

A. Yes.

Q. Well, name them.

Mr. Stewart: I object unless they are all recalled.

Trial Examiner Norwood: Overruled.

A. Well, flexible conduit. There were pipe fittings of different kinds, several kinds; there was cable, some other items—I am not able to recall—that were not even iron and steel articles, not made of iron and steel. I would not attempt to enumerate them now.

By Mr. MacIntyre:

Q. Well, is it possible, even in looking at the bid which was submitted by the Westinghouse Company and 5839 upon which Respondents' Exhibit 292 is based, to determine whether the difference, if any, that is shown in the alternate lump sum bid below, if any, the aggregate of the unit prices shown in the bid were as the result of any cuts in price on conduit or cuts in prices on these other items?

Mr. Stewart: That is exactly what I brought out, Mr. Examiner.

Mr. MacIntyre: Well, let us find out what the answer is.

Mr. Austin: Your Honor please, I would like to note an objection here on the ground that it is outside of the scope of the cross-examination.

Mr. MacIntyre: I submit it clears up a question asked by Mr. Robison.

Trial Examiner Norwood: I think so. Objection overruled.

Mr. MacIntyre: Read the question.

(Question read.)

Mr. Stewart: Now, I suggest, Mr. Examiner, that that is capable of a "yes" or "no" answer. The question is, "Is it possible?"

Trial Examiner Norwood: Answer the question.

A. I think it would be very difficult. There might be some of these which might disclose that.

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Mr. Stewart: The answer is that it would be
5840 very difficult.

By Mr. MacIntyre:

Q. Well, I show you this bid which is marked for identification as Respondents' Exhibit 294-A. Can anyone determine by looking at the bid—

Mr. Austin: Just a minute, Mr. Examiner.

Mr. MacIntyre: Well, I haven't finished my question.

Trial Examiner Norwood: Let him finish his question. Go ahead.

By Mr. MacIntyre:

Q. Can you in looking at that bid determine whether or not that any reduction in the lump sum alternate bid shown thereon from the aggregate total of all of the bids was made on conduit or on couplings or some other item?

Mr. Robison: Well, now, this is entirely immaterial, irrelevant, Mr. Examiner, unless it appears that the bid now called to the witness' attention is included and listed in 292, the tabulation.

Trial Examiner Norwood: Well, doesn't it so appear?

Mr. Robison: No. As I understand, the witness has testified out of 244 bids which he has before him there were only 80 listed in 292. Now, I think before he is permitted to comment on the one that is called to his attention we should know whether that is one of the
5841 eighty or one of those not included.

Trial Examiner Norwood: Well, I think that point is well taken.

Mr. MacIntyre: It so happens, Mr. Robison, that that bid is listed in 292.

Mr. Robison: Well, if the witness will so state, I will withdraw—

Mr. Stewart: Well, may I have the question, please?

Mr. MacIntyre: It is on invitation—it is on invitation 272363-R and 292 shows it to be less.

Now, read the question to the witness.

Trial Examiner Norwood: Read the previous question.

(Question read.)

Mr. Stewart: Now, the question is, "Can you do that?"

Trial Examiner Norwood: That is right.

A. I think the fair inference—

By Mr. MacIntyre:

Q. I am asking—

Mr. Stewart: Just a moment.

Q. Will you please answer the question, Mr. White?

Trial Examiner Norwood: Tell us that, whether you can find out—whether you can or cannot do that.

A. I think I can in this case.

5842 Q. Tell me how you can determine whether or not that any reduction made in the aggregate in that lump sum bid was attributable to a cut in any price shown thereon on conduit.

A. The aggregate of the other items was $121.

Q. The aggregate of the other items was $298; wasn't it?

Mr. Stewart: Please, Mr. MacIntyre.

Mr. Austin: Mr. Examiner, let us not have Mr. MacIntyre testify from the records here, if he doesn't mind. He might swear himself and put himself on the stand with these bids and tell us all about it. He is leading the witness. He is doing everything that he has fits about—

Trial Examiner Norwood: Let the witness answer.

By Mr. MacIntyre:

Q. Looking at that invitation again, what is the aggregate of all of the bids—

Mr. Robison: I think there is a pending question, Mr. Examiner, which the witness should be allowed to answer.

Trial Examiner Norwood: Well, Mr. MacIntyre may withdraw it.

Mr. Robison: I don't think Mr. MacIntyre should be allowed to steer him off on something else now.

Trial Examiner Norwood: Counsel can withdraw that question if he wishes to and ask another.

A. The question is whether I can tell whether there was a cut made on conduit?

5843 By Mr. MacIntyre:

Q. On conduit or some other item. That is the question.

Mr. Robison: That isn't the question.

Mr. MacIntyre: That is the question, and I will withdraw all prior questions.

Trial Examiner Norwood: You withdraw the last question there and ask this one.

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A. That is a difficult question. I don't know whether I can answer or not. I don't know whether this price first quoted here is a regular price or a cut price.

Mr. Robison: Well, I object to any further testimony then. It is obvious that he is construing figures that he knows nothing about.

(Question read.)

(Discussion off the record.)

Mr. Austin: May I go on the record?

Trial Examiner Norwood: You want to do what?

Mr. Austin: I would like to go on the record, not be off the record.

Trial Examiner Norwood: There is nothing before the house now, you see.

Now, if he will ask another question, then you will be privileged to make a motion or object or not.

Mr. Austin: If Your Honor please, I would like on the record to ask for a clarification of Mr. Mac-
5844 Intyre's statement that he had withdrawn all prior questions.

Mr. MacIntyre: All prior pending questions, if you please.

Mr. Austin: Oh, well, that is all I want to know.

Trial Examiner Norwood: Now, I shall ask the counsel to ask a new question. Go ahead.

By Mr. MacIntyre:

5845 Q. Now, I am asking Mr. White to please tell us whether or not that in looking at those figures in the bids included there on Respondents' Exhibit, for identification, 294-A he can tell us whether that the reduction in the lump sum alternate bid which is the difference between it and the aggregate bid is attributable to a cut in price on conduit instead of a cut in price on the other items shown?

Mr. Robison: I understand the question to be whether any part of that cut in price is attributable to conduit.

Mr. MacIntyre: No. This last question is not that, Mr. Robison.

Mr. Robison: Then I object to the question as irrelevant.

Trial Examiner Norwood: Objection overruled.

Answer the question.

Mr. MacIntyre: Now, read the pending question to the witness, the last question, please.

(Question read.)

Mr. Stewart: The question is, can he do that.

Trial Examiner Norwood: Now, tell us if you can do that.

5846 A. I can in this case.

By Mr. MacIntyre:

Q. How can you?

A. Because the aggregate of the other items than the pipe is only $79.56; the difference between the bid at the unit price and the alternate bid was $439.52, so if they had given the other items away there would still have been a less figure on the pipe.

Trial Examiner Norwood: But if the aggregate of the other things was less than that difference you would not be able to tell; is that right?

The Witness: Yes. If it were less than that I wouldn't be able to tell. Not less than that, but if it were less.

Trial Examiner Norwood: I mean if it were lower, yes.

The Witness: It would have to be—

Mr. Austin: More?

The Witness: It would have to be more.

Mr. Austin: Than the difference?

The Witness: Yes. That is good. If it is responsive to the question, I will say there are a lot where that couldn't be done.

By Mr. MacIntyre:

Q. In this list—

5847 A. Yes.

Q. —of Respondents' Exhibit 294, for identification?

Well, I show you invitation marked—that is, the bid, copy of the Westinghouse bid, marked as invitation 319435. Is that one where that any lump sum bid cannot be said to apply in any reduction from an aggregate of the unit prices to conduit as against other items shown thereon?

5849 (Whereupon, at 12:25 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day.)

5850 Afternoon Session.

Trial Examiner Norwood: Proceed.
(Last question read by Reporter.)

HUGH E. WHITE resumed the stand and testified further as follows:

Redirect Examination (Continued) by Mr. MacIntyre.

5851 Q. Mr. White, have you made an examination of bids which are listed on Respondents' Exhibit 292 and found as to any of them that the lump sum bid shown for them included bids on not only conduit, but other items such as bushings, couplings, wire, flexible conduit?

A. Yes.

Q. Can you tell us about any example of such bids that you have located in your examination and tell us what any one of those examples shows?

A. Well, the first bid listed on page 12 of Respondents' 292—

Q. That is Respondents' Exhibit 292-L?

A. 292-L, yes, inquiry 317073-A contains a considerable number of other items than pipe, the aggregate price of which—that is, the number of feet multiplied by the
5852 unit value shown there is $600.81.

Q. And is that the amount that is listed on 292-L?

Mr. Austin: What was that figure?

A. No. The aggregate value of all of the items is $1,202.21.

Q. What is the aggregate of the bid price on the conduit in that instance, as shown by the bid?

A. $600.81.

Q. And the lump sum included in 292 is what?

A. $1,202.21. The alternate bid was $850.

Q. And that is the bid that appears on 292-L?

A. Yes. The difference between—

Q. Are there other instances of like character listed in 292?

A. There appear to be, but I haven't had sufficient time to analyze them since adjournment.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Do you wish to ask him some further questions on that last subject?

Mr. Austin: I am not sure I would like to ask a question. I would like to see this bid that he has been testifying about.

(After a pause.) I have no further questions.

Mr. MacIntyre: I said that was all. I want the identification of a document here.

(A document was thereupon marked for identifica-
5853 tion "Commission's Exhibit No. 761.")

By Mr. MacIntyre:

Q. Mr. White, I am showing you Commission's Exhibit, for identification, 761. Is that the document that you told Mr. Stewart on cross-examination that you had referred to for the purpose of refreshing your memory and recollection?

A. Yes.

Q. And which you said it would be necessary probably to refer to in order to make more clear your testimony that you were giving?

A. That is correct.

5856 COMMISSION'S EXHIBIT NO. 761 was offered and received in evidence.

Trial Examiner Norwood: Now, Mr. White, you will resume the stand. Mr. White, you will resume the stand here for any further questioning.

5857 Mr. Austin: If Your Honor please, before Mr. White leaves the stand I would again like to look at Respondents' Exhibit, for identification, 294-A, about which Mr. White testified this morning.

Trial Examiner Norwood: Yes.

(Mr. MacIntyre hands documents to Mr. Austin.)

Mr. MacIntyre: Mark this 762, please.

(The document referred to was marked for identification "Commission's Exhibit No. 762.")

Mr. Austin: That is all, sir. Thank you.

Mr. Stewart: Just a moment, please.

Now, are we supposed to take charge of these?

Mr. MacIntyre: If you care to do so.

Trial Examiner Norwood: Let the record show that Mr. White is discharged.

(Witness excused.)

Mr. MacIntyre: I am turning over to Mr. Stewart now,

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with the understanding that he is to return them to Mr. Taylor, Respondents' Exhibit, for identification, 294-
3858 A to blank, the Westinghouse Electric & Supply Company bids (handing to Mr. Stewart).

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: Now, if Your Honor please, on February 10, 1942, page 4865, Mr. Robison offered and had received into evidence, as a result of a ruling you made subsequent to that page, Respondents' Exhibit 334-A to D, what purports to be a price schedule of ceiling prices on iron and steel products and purports to have been issued by the Office of the Price Administration. It also has attached to it what purports to be a release for the press relating to such other issue by the Office of Price Administration. That was received over my objection, which is stated immediately following page 4865.

I have since learned that this price schedule, Respondent's Exhibit 187 and 189, are not as explanatory as they could be, and I have secured a further explanation of those documents. I have that here as stated by Leon Henderson, Administrator in the Office of Price Administration. I had it marked as Commission's Exhibit 762, for identification, and I offer it in evidence to further explain Respondents' Exhibits 187, 189, and 334, and the significance of those exhibits (handing to Respondents' Counsel).

Trial Examiner Norwood: Any objection?

3859 Mr. Robison: Just one moment, please.

I object to this as entirely irrelevant and immaterial. It purports in part at least to be a statement by Leon Henderson, Administrator, of what will be done in the future if something is done in the meantime. It has no evidentiary value whatever. I object to it.

Mr. MacIntyre: There is no objection on the ground that that is or is not Mr. Henderson's letter, is there?

Mr. Robison: Oh, I will not press that particular element of the offer.

Mr. Austin: If Your Honor please, I would like to object to this letter on the ground that it has nothing to do with the Respondents' exhibits Mr. MacIntyre claims it clarifies, and that it therefore is not rebuttal evidence.

Trial Examiner Norwood: Any further objections?

Mr. Robison: Well, I just want to add to my objection that the part of it which I referred to states that something will be done if something else is done. Mr. Hender-

son, if present as a witness, would not be permitted to testify to that, and certainly his statement to that effect should not be allowed to go in in the form of a letter from him.

Mr. MacIntyre: Here is this Respondent's Exhibit 334, a copy of it (handing to the Trial Examiner).

It seems to me that when Respondents put in a document purporting to be written by Mr. Henderson,
5860 certainly a statement by him would be admissible of what he intends to do about the document which was put in evidence. Can't we find out what its significance is to that degree?

Mr. Austin: Does that letter state what he intends to do?

Mr. MacIntyre: I think that last paragraph says that.

Trial Examiner Norwood: Off the record till I can read it.

Mr. MacIntyre: If Your Honor please, on that point you have to remember that what is included in Respondents' Exhibit 334 is something that is running into the future. It was just issued as of February 4, 1942.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. Stewart: I want to object on the record that the document is obviously an ex parte statement of a witness who is not produced for cross-examination.

Mr. Austin: Further than that, I would like to state that, no matter what Mr. Henderson says he will do in the future, it is no proof as to what the Office of Price Administration at any future time would do.

Trial Examiner Norwood: Well, that goes to the implications here.

Mr. Bozeman: If Your Honor please—

5861 Trial Examiner Norwood: Yes.

Mr. Bozeman: —may I just make this—

Trial Examiner Norwood: Yes.

Mr. Bozeman: —note this objection, that it seems to me that there is a distinction between those two documents. One of them, as I understand it presently, is that the order is already in effect. The other is—

Mr. MacIntyre: A modification of the order.

Mr. Bozeman: It is not a modification at all. All it is is just a letter, purely an ex parte document. It has no present effect. It cannot be given any effect such as may

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be attributed to an order of an existing governmental body. Consequently, I don't believe that the fact that the former has been admitted lays any foundation whatever for admitting this letter.

Trial Examiner Norwood: Now, the point is well taken as to its being hearsay evidence there and a statement not coming in subject to cross-examination, with this exception: That I think that the Commission may take judicial notice of Mr. Henderson's signature and his quotation here as to this amendment of February 4, 1942. Now, the letter may be admitted to show that this schedule No. 6 was amended on February 4, 1942, as shown by the material in the second paragraph, which is included in quotations.

Mr. Houston: If Your Honor please, I would like
5862 to state an objection that I don't think is covered.

I call your attention to the fact that there is a letter purporting to be signed by Mr. Henderson addressed to Mr. Ayres, chairman of the Federal Trade Commission. Now, I assume that this is an answer to a letter or inquiry of Mr. Henderson to Mr. Ayres on that subject, and it seems to me in order to interpret that letter Mr. Ayres' original inquiry to Mr. Henderson should be put in with this letter, too. It seems to me like taking a witness' testimony and not putting in the matter to which the witness' attention has been directed.

Trial Examiner Norwood: Well, maybe it is perfectly agreeable to counsel to let these two paragraphs go in.

Mr. Robison: Do you mean by that that you are satisfied with the admission of that final paragraph?

Mr. Austin: He didn't admit the final paragraph.

Mr. Robison: Then, can we have so much of the paragraph as is to be admitted, admitted and read on the record and the document itself excluded?

Mr. MacIntyre: I object to that. I want the letter physically with us because this matter is going to come up later.

Trial Examiner Norwood: Counsel shall have his exception on that, but I shall receive it as stated, for the quoted matter only, constituting the second paragraph of the letter as certified to by Mr. Henderson.

5863 Mr. Bozeman: And the proffer is overruled as to the other parts of the letter?

Trial Examiner Norwood: Yes. The other is rejected. The first and third paragraphs are rejected, and the second paragraph is received as stated.

Mr. MacIntyre: Your Honor, the first paragraph shows its relation to this document 334; that is, that it relates to price schedule No. 6.

Trial Examiner Norwood: Well, yes, the first paragraph will be considered as explanatory of the second paragraph. That is right.

Mr. Robison: Of course, you understand the quoted paragraph is already in the exhibit which we put in.

Trial Examiner Norwood: The first paragraph will be considered as explanatory, yes. So the counsel may except to that and have the Commission take it in if they in their superior wisdom choose to do so.

Proceed.

COMMISSION'S EXHIBIT NO. 762 was offered and received in evidence.

Mr. MacIntyre: Proceed?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Your Honor please, with reference to the testimony of Mr. Frank Hodkinson, which ap-
5864 pears beginning line 11, page 3904, and for several pages following, I want to read onto the record the following statement and ask the Commission to take judicial notice of it and ask Your Honor to take judicial notice of it in connection with the drawing of reports on the evidence in this case.

Mr. Robison: Just a moment, Mr. Examiner.

Trial Examiner Norwood: Wait a minute.

Mr. Robison: Before any statement is read on the record with the request that either the Commission or the Examiner take judicial notice of it, I think we are entitled to know what the statement is to be.

Mr. MacIntyre: Well, you may hear it.

Mr. Robison: Well, I object to its being taken on the record until we know what it is.

Trial Examiner Norwood: Yes, I don't think—just what is it?

Mr. MacIntyre: It is a statement of findings by the Commission in Docket 760—

Mr. Stewart: What is that, Pittsburgh Plus?

Mr. MacIntyre: —the case of the United States Steel Corporation, et al., including its subsidiary, the National Tube Company.

Mr. Stewart: That is the famous Pittsburgh Plus case?

Mr. MacIntyre: That is correct.

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5865 Mr. Bozeman: Now, may we see the statement, Mr. MacIntyre?

Trial Examiner Norwood: I think that we had better go off the record and find out what we are doing here.

Mr. Robison: I think so, too.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back to the record.

Go ahead. Make your statement.

Mr. MacIntyre: If Your Honor please, with further reference to the testimony of Mr. Frank Hodkinson, called as a Respondents' witness here, concerning use of the basing point system by the National Tube Company, the testimony beginning at line 11, page 3904 of the record, and running for several pages following, and referring also to the portion of the testimony of Mr. Hodkinson on cross-examination on the same point beginning at line 13, page 3939, and continuing for several pages, I now make reference to findings of the Commission in its Docket 760, in the matter of the United States Steel Corporation, et al., which includes the National Tube Company, and particularly to paragraph A and paragraph E appearing on pages 37 and 38 of Federal Trade Commission decisions, Volume 8.

Mr. Austin: Thirty-seven and what?

Mr. MacIntyre: Thirty-seven and thirty-eight.

5866 Mr. Stewart: You are not through yet; are you?

Mr. MacIntyre: Of Federal Trade Commission decisions, volume 8, concerning matters which go to the manner in which the basing-point system was adopted and used by the National Tube Company, and I ask that you, in making your report upon the evidence in this case to the Commission, and that the Commission in considering this case, take judicial notice of the records of the Commission bearing upon that problem.

Mr. Stewart: May I ask that the record be clarified to the extent that Mr. MacIntyre state exactly in what respect that he says the findings in this United States Steel Corporation case contradict the testimony of Mr. Hodkinson?

Mr. MacIntyre: I will be glad to do so.

Mr. King: I object to that.

Mr. Bozeman: I object, too.

Mr. King: Cluttering up the record.

Mr. Robison: I must protest against that request, Mr. Examiner, and in response to—

Mr. Stewart: What paragraph is it?

Mr. Robison: In response to Mr. MacIntyre's motion or request that he has now put on the record, I urge my objection most strenuously, as I have done in discussion off the record, that it is beyond any rights of the Commission in this proceeding to take notice, judicial or otherwise—

5867 Trial Examiner Norwood: Yes.

Mr. Robison: Of what it may have found or ordered in any other proceeding.

Trial Examiner Norwood: In any other case, yes.

Mr. Stewart: I would like to read this and see where we are.

Trial Examiner Norwood: Yes.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go back to the record.

Now, the counsel for the Respondents, Mr. Stewart, has withdrawn his request for an explanation from Mr. MacIntyre.

Mr. MacIntyre: Well, if Your Honor please, even though the request is withdrawn, I want to cite you to the record beginning at line 20, page 3940, to show you that what I have asked you to take judicial notice of is in direct rebuttal to a statement by the witness at that point, and I quote the record:

"Q. But you are expressing yourself as to these practices not having any connection with those Gary dinners.

"A. Not at all. I said that there was absolutely no connection between the Gary dinners and the instructions to issue a certain price list."

5868 And then further I cite you to page 3945, in which on cross-examination it became necessary to follow up questions which Mr. Robison had asked about assumptions which this witness had expressed on direct examination as to how the $4 differential between the Pittsburgh base and the Chicago base price on rigid steel conduit came about. The witness stated to Mr. Robison on direct that that, in his opinion, or he assumed that it came about as a result of the Commission's order in the Pittsburgh Plus case, Federal Trade Commission Docket 760, its decisions, volume 8, page 1, and following.

Mr. Robison: The only purpose—may I just say this?

Mr. MacIntyre: Yes.

Trial Examiner Norwood: Yes; go ahead.

Mr. Robison: The only purpose of the reference to the Pittsburgh Plus case at that time and in that connection was to fix an approximate time. There was no suggestion of any element of cost until Mr. MacIntyre attempted to bring it out on cross-examination of Mr. Hodkinson.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: It was just a nice little ground laid for an inference, and then when I attempted to clear it up it became clear and the witness so stated, that what he had in mind, and what he was attempting to get across to Mr. Robison on direct examination, was what he assumed to be

5869 the significance of the findings and the order of the Commission in Docket 760, the Pittsburgh Plus case, which I have just asked you, and I ask the Commission, to now take judicial notice of.

Trial Examiner Norwood: Well, I shall pass that up to the Commission as to whether they will take judicial notice of it, but, unless directed to do so, I shall not take notice of it in preparing my findings; that is, take notice of that matter as evidence. I should not take notice of anything any further than that there was an action brought at that time which brought the basing-point method into question and was made against the Respondents therein named in the case reported there as you have cited.

Mr. MacIntyre: Well, I have given the citation on the record.

Trial Examiner Norwood: Counsel has his exception and he can take that before the Commission.

Mr. MacIntyre: I ask that these papers be marked for identification.

(Documents were thereupon marked for identification "Commission's Exhibit No. 763-A to 763-C.")

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: If Your Honor please, I have just had marked for identification as Commission's Exhibit

5870 763-A to C a document which has been certified by Mr. Austin, counsel for the Peerless Electric Company here, as a photostat of an authentic and genuine record of an agreement of July 17, 1928, between the National Electric Products Corporation and the Peerless Electric Company.

Mr. Stewart: You mean Mr. Houston, don't you?

Mr. MacIntyre: I will ask Mr. Austin if he will agree that he so certified that document (handing to Mr. Austin).

Mr. Austin: Yes, I certified it.

Mr. MacIntyre: I now offer the document into evidence.

Mr. Stewart: I would like to have an offer as to what he proposes to prove; how is it rebuttal, in other words?

Trial Examiner Norwood: What do you want to show by that, Mr. MacIntyre?

Mr. MacIntyre: It meets the testimony which was put in by Mr. Houston through Mr. Bennett here bearing upon his contention as to what was or was not the effect of proposals made by representatives of the Rigid Steel Conduit Association in the Organization Service Corporation on his contractual forms.

Trial Examiner Norwood: Any objection?

Off the record a minute.

5871 (Discussion off the record.)

(Documents were thereupon marked for identification "Commission's Exhibit No. 764-A to 764-K.")

Trial Examiner Norwood: Back on the record.

Mr. Houston: If Your Honor please, in reference to the pending offer, Commission's Exhibit 763-A to C, which purports to be a contract between National Electric Products Corporation, formerly the National Metal Molding Company, and Peerless Electric Company, the date of which is July 17, 1928, this is objected to for the reason that it is not proper rebuttal testimony of anything that I have a recollection of having put in as part of the case of the Respondent National Electric Products Corporation; and, furthermore, if it is any attempt to discredit the testimony of Mr. Bennett, I still fail to see any specific testimony to which it relates. As to the point of time, it goes way beyond the period which is mentioned in the complaint, namely, back in 1928. I fail to see any connection at all as rebuttal testimony.

Mr. Austin: If Your Honor please, Mr. MacIntyre offers this evidence to rebut, he says, Mr. Bennett's testimony as to the effect of the so-called Blake contract on his then existing contract. The record will show you, I believe, that there is already in evidence a more recent contract than this one; therefore, Blake's contract could have had no direct effect upon this one; therefore, it does not go to prove or

5872 to rebut what Mr. MacIntyre offers it for; and I therefore object to it on that ground.

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Trial Examiner Norwood: What do you say?

Mr. Stewart: We will give you an objection which Mr. Wigmore and all agree on, that if you intend to contradict the testimony of a witness in rebuttal by a written document, that you must first give the witness a chance to explain the document; otherwise your rebuttal is not permissible.

Trial Examiner Norwood: Is the written document a statement which he had made?

Mr. Stewart: No, but it is a subject about which he testified, and there may be some explanation of this contract, which we will know.

Trial Examiner Norwood: I do not think that rule applies there.

What do you say, Mr. MacIntyre?

Mr. MacIntyre: I think Mr. Austin misunderstood my offer of proof. I said that this went not only to a showing of the effect of the Blake contract but of certain suggestions made by representatives of the Rigid Steel Conduit Association other than Mr. Blake and others as well.

Mr. Austin: If Your Honor please, that is about as meaningless a statement as I ever heard. It goes to the statement of somebody else and others. Now, how can we

5873 know what he is trying to rebut?

Mr. MacIntyre: It is simply this, the statement made by Mr. Bennett when he was on the stand that he independently did everything that he did about his contracts; that the Rigid Steel Conduit Association and its representatives had no effect whatever upon anything that he did.

Mr. Stewart: Which, of course, makes the objection which I made perfectly valid, because he may have a perfectly good explanation for the Peerless contract.

Mr. Austin: What I do not understand is this, sir, if I may have just one more word: Mr. MacIntyre's own case, as I remember it, shows that the Rigid Steel Conduit Association was founded in 1933 or 4. I have forgotten the date. He now changes his ground for getting this in evidence—having said that I misunderstood his first ground—this is now supposed to be a contract he adopted upon recommendation of the Rigid Steel Conduit Association six years before the Association was founded.

Mr. MacIntyre: No. No. I did not say that, either.

Trial Examiner Norwood: What did you say?

Mr. MacIntyre: We have the contract in evidence which was adopted after the Association came into effect. I am

just going behind that a little bit in the offer of this so that we can make some comparison.

Mr. Welch: I would like to make this further state-
5874 ment, Your Honor. It seems to me that Mr. MacIntyre had this document when Mr. Bennett was on the stand. He had the opportunity to cross-examine him with reference to that document at that time. He did not see fit to do so. It seems to me to be highly improper to wait until he gets off the stand and put this in on his rebuttal.

Trial Examiner Norwood: I shall overrule the objection and receive this paper for study.

COMMISSION'S EXHIBIT NO. 763-A to 763-C was offered and received in evidence.

Trial Examiner Norwood: Off the record now.

(Discussion off the record.)

Trial Examiner Norwood: Recess until 10 o'clock tomorrow morning. We will meet in this room. Three-twenty.

(Whereupon, at 3:20 o'clock p. m., March 2, 1942, the hearing in the above-entitled matter was adjourned.)

5877 PROCEEDINGS.

Trial Examiner Norwood: Hearing come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is now reconvened in the Office of the Federal Trade Commission, Washington, D. C., Room 532, at 10 o'clock a. m., on March 3, 1942.

Please note the appearances.

Call your witness, Mr. MacIntyre.

Mr. MacIntyre: Before we go ahead with the witness I want to say that I have here a document marked for identification as Commission's Exhibit 764-A to K, inclusive. It has been certified by Mr. R. W. Austin as a photostat of the authentic, genuine record of an agreement of January 11, 1929, between the General Electric Company and E. B. Latham & Company.

Trial Examiner Norwood: Off the record just a minute.

(Discussion off the record.)

Mr. MacIntyre: I will ask Mr. Austin if he will agree that my statement as to his certification is correct.

Mr. Austin: Yes, I certify to that.

Mr. MacIntyre: Now, if Your Honor please, I offer into

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evidence Commission's Exhibit, for identification, 764-A to K, inclusive.

Mr. Austin: I would like an offer of proof on that
5878 document, if Your Honor please.

Trial Examiner Norwood: What do you want to show by it, Mr. MacIntyre?

Mr. MacIntyre: It has a bearing upon the effect of the operations of the General Electric Company and E. B. Latham Company of the activities of their competitors—

Mr. Austin: If Your Honor please—

Mr. MacIntyre: —acting in concert with them, which they denied when Mr. Latham was called and when representatives of the General Electric were called as defense witnesses in New York.

Mr. Austin: I fail to see how that is rebuttal in this case. How the mere introduction of a contract dated 1929 which is, as I remember it, some seven years before the date the Commission claims is the guts of this alleged conspiracy, goes to show concert, or alleged concert of action between these two people on this contract and other Respondents. Now this is a part of Mr. MacIntyre's direct case instead of his rebuttal. Therefore, I object to the admission of this document on that ground.

Mr. Stewart: Well, I would also like to add the objection that if it is offered for the purpose of contradicting Mr. Latham, then it is inadmissible for the reason that it should have been called to the attention of Mr. Latham when he was on the stand and an opportunity afforded
5879 him to explain it.

Trial Examiner Norwood: That is a document that is similar to your 763-A to C; is it?

Mr. MacIntyre: Yes. Yes.

Trial Examiner Norwood: After counsel have stated their objections, I will examine it and rule.

Mr. Bozeman: If Your Honor please, on behalf of General Electric Company, I would like to state that it seems to me that this agreement is merely another copy of the same form of document, that is, an agency agreement, that was put into evidence while we were in Brooklyn. It was put in through Mr. Newman. Now, just what Mr. MacIntyre wants to prove by putting in this document, which purports to be a contract between General Electric Company and Latham, I don't know, and I would like to have a further statement of just what he thinks it shows. On the basis of that I may want to object to it.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. MacIntyre: Would you care to hear what my offer is?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Will you read that statement, Mr. Reporter?

Trial Examiner Norwood: What I said was off the
5880 record.

Mr. MacIntyre: Yes.

(Statement read as follows:

"Mr. MacIntyre: It has a bearing upon the effect of the operations of the General Electric Company and E. B. Latham Company of the activities of their competitors acting in concert with them, which they denied when Mr. Latham was called and when representatives of the General Electric were called as defense witnesses in New York.")

Trial Examiner Norwood: Does counsel want to add anything to his offer of proof there?

I should like to know how this indicates an effect.

Mr. MacIntyre: Of course, we have copies of the agreement forms used by the General Electric Company subsequent to that date in evidence. They have denied through defense witnesses that any changes that were made in their forms at any time were as a result to any degree of an action of its competitors. Well, this form that I am offering bears upon that latter question, and when comparison is made of it and the others that are in evidence, the other forms that are in evidence, and with the rest of the record bearing upon those forms, I think we will be in a little better position to answer the question.

Mr. Bozeman: Well, I don't think that that is
5881 responsive at all. He says it has a bearing upon the question,—

Trial Examiner Norwood: Well,—

Mr. Bozeman: —but I would like to know specifically just how this document has any bearing at all.

Now, the form of agreement that I put in evidence in Brooklyn is the one incidentally—so far as I can tell, it is the same contract, and this is dated January 11, 1929, and the testimony in the record shows that the other form went into effect January 1 or January 2, 1929, and that there were only two changes that were made in the form. I still,

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frankly, don't understand exactly what it is that Mr. MacIntyre wants to prove by this.

Trial Examiner Norwood: I will reserve the ruling until I can study the paper.

Mr. MacIntyre: Your Honor please, you will also find in testimony of Mr. Newman, as a representative of the General Electric Company, certain statements of his as to what the relationship of his company was with the E. B. Latham Company. This contract gives us much more information on that problem than Mr. Newman was able to give us as a defense witness.

Trial Examiner Norwood: I will reserve the ruling and ask the counsel to let me have the paper when they have finished inspecting it.

5882 Mr. Austin: Your Honor please, just for the record, I fail to see how this going further in explanation than Mr. Newman was able to go is any rebuttal of what Mr. Newman said.

Trial Examiner Norwood: Well,—

Mr. Austin: And that is what Mr. MacIntyre purports to be doing here.

Trial Examiner Norwood: I see. We have been admitting these papers for study. All of these various contracts have been offered by both sides here for study, just how they arrived at a common form or a similar form, and I shall see if this has any value in that study, and, if so, I shall be inclined to receive it the same as I did the one yesterday.

Mr. MacIntyre: If Your Honr please, this—

Mr. Austin: I would suppose—

Trial Examiner Norwood: Wait a minute. Wait a minute.

Mr. Austin: I would suppose that that is a matter of degree. We have been trying to find what the forms are. There is no doubt about that, but suppose Mr. MacIntyre in alleged rebuttal comes back with a contract dated January 1, 1914. The argument is just as sound for comparison purposes.

Mr. MacIntyre: Your Honor please, this goes further than that. This is offered not only for the form of the contract that is involved, but for the contract itself, to 5883 show the relationship then existing between the E. B. Latham Company and the General Electric Company—

Trial Examiner Norwood: All right. Proceed.

Mr. MacIntyre: —as evidenced by the contract.

Trial Examiner Norwood: Call your witness.

Mr. MacIntyre: We will call as the next witness Mr. Hugh White.

Trial Examiner Norwood: Hugh E. White, previously sworn.

HUGH E. WHITE was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct Examination.

5891 (A document was thereupon marked for identification "Commission's Exhibit No. 766.")

Mr. MacIntyre: If Your Honor please, I have had marked as Commission's Exhibit, for identification, a booklet as Commission's Exhibit, for identification, 766, a booklet descriptive and explanatory of the Johns-Manville transite conduit, and Korduct, one of which is the product or a sample of the product marked in evidence and received in evidence here as Respondents' Exhibit 118, and will ask that counsel for the Respondents agree as to

5892 the identification and authenticity of that booklet as a booklet descriptive and explanatory of the product I have just mentioned.

Mr. Stewart: May I inquire into the purpose of this evidence?

Mr. MacIntyre: Well, there has been no offer of any evidence. I am asking Respondents' counsel the question right now.

Mr. Stewart: As to whether this is a Johns-Manville book?

Mr. MacIntyre: Describing the product that I have mentioned.

Mr. Stewart: We are really no further from where we started. All I know is Mr. MacIntyre hands me a book. I don't know whose book it is. From looking at it, it appears to be a Johns-Manville book, but I don't see how we can go any further than that.

Mr. MacIntyre: Do you dispute the authenticity and identification of it as a Johns-Manville book, which it purports to be?

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Mr. Stewart: Well, speaking for myself, I wouldn't raise any question about it being a Johns-Manville book, but—

Mr. MacIntyre: Descriptive of the products I mentioned?

Mr. Stewart: Well, that, I can't go any further because all I know is what is in the book. I haven't read it

5893 and—

Mr. MacIntyre: Well, Mr. Stewart and Mr. Houston are the two Respondents' counsel who are involved with this Respondents' Exhibit 118, and if they don't know what it was all about, they certainly took advantage of me because I didn't know what it was all about at the time.

Mr. Stewart: Well, my recollection is that that material, Exhibit 118, was put in evidence for the purpose of showing one of the materials which were made by other manufacturers which competed with rigid steel conduit, and that is all the further we went.

Trial Examiner Norwood: He wants—

Mr. Stewart: I don't know what Mr. MacIntyre has in mind. Sir?

Trial Examiner Norwood: He wants to put in something that purports to be a descriptive booklet that is put out by the same firm that produces the exhibit.

Mr. Stewart: It purports to be a lot more than that.

Trial Examiner Norwood: He asked you whether or not you would waive identification of the booklet.

Mr. Stewart: I would myself so far as the book itself is concerned. But I don't admit its materiality or admissibility.

Trial Examiner Norwood: No. No.

5894 Mr. MacIntyre: I would not ask you to agree to that.

Mr. Robison: I join in that.

Mr. MacIntyre: That is, that you agree as to the authenticity and the identification of the booklet being what it purports to be?

Mr. Robison: Yes.

Mr. MacIntyre: I can state for the record that I did secure it from the Johns-Manville as a descriptive booklet of this product which Mr. Stewart and Mr. Houston have had involved in some testimony here.

Mr. Houston: I am not claiming it is anything except it is a Johns-Manville book. It appears to describe something that looks like this Respondents' Exhibit 118.

Mr. MacIntyre: Well, if Your Honor please, on the basis of the identification, authenticity, of the booklet as established, and also in the light of the fact that the booklet is explanatory and descriptive of Respondents' Exhibit 118, I offer the booklet in evidence to describe and explain an exhibit which has been received here as a Respondents' exhibit.

Mr. Robison: I object to it as incompetent, clearly merely hearsay, and I think it should be excluded also on the ground that it is an unnecessary expansion of the record for no good purpose.

5895 Mr. Houston: I would like to add the further objection, Your Honor, that similar material to this was offered by me in connection with the testimony of Mr. Bennett. I refer, I believe, to Exhibits 124—some such number, which were similar advertising descriptive matter of the products of the National Electric Products Corporation, which Your Honor objected to.

Mr. MacIntyre: But products which were not in evidence, and this goes to a product which you did put in evidence here.

Mr. Houston: I beg your pardon. They were in evidence.

Trial Examiner Norwood: Now, this product was in evidence and I think I shall overrule the objection and receive this exhibit, with its use restricted to the description of this particular product that is in evidence here and nothing else.

Mr. MacIntyre: And explaining it and its uses?

Trial Examiner Norwood: That is right.

Mr. Stewart: Of course, that puts us—oh, excuse me.

Mr. Robison: You would also receive it as a physical exhibit as you did in the case of some others?

Mr. MacIntyre: I would agree to that.

Trial Examiner Norwood: Yes, it is received as a

5896 physical exhibit, as Commission's Exhibit 766.

COMMISSION'S EXHIBIT NO. 766 was offered and received in evidence.

Mr. Stewart: Of course, that puts us in a precarious position because that is obviously a description of the Johns-Manville product and the uses to which it can be put, and we are deprived of inquiring of anybody who might enlighten us on the subject of a document which goes in evidence. If you recall, I wanted to put in evidence the

history of rigid steel conduit, and Mr. MacIntyre objected and it was sustained.

Mr. MacIntyre: When Mr. Houston and Mr. Stewart were involving this Respondents' Exhibit 118 in testimony they were offering, I had no opportunity at that time to cross-examine anyone concerning the manner in which this product was manufactured, anything about its specifications, or where it is used and how, and I am merely attempting now to supply that information in the same manner that they supplied the original information.

Trial Examiner Norwood: Now, the ruling is made. Go ahead.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Are you ready to go ahead, Mr. MacIntyre?

5897 Mr. MacIntyre: May we go off the record?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back to the record.

(Documents were thereupon marked for identification "Respondents' Exhibit No. 335-A to 335-Z-196.")

Mr. Gilpatric: Mr. Examiner, I am now ready to make an offer of certain materials relating to the offer made by the Commission during its case on direct on the subject of public bidding, the Commission's exhibits being, to which this offer which I am now going to make is relevant, Exhibits 318 to 330, and 334 through 364.

First, I offer Respondents' Exhibits 1 through 21, for identification, being 21 abstracts of bids submitted to the Panama Canal during the period covered by Commission's Exhibits 318 through 330, but which were not included in the Commission's offer. In other words, the Commission offered some 40 percent of the total number of bids received by the Panama Canal during the period from October 14, 1935, through August 19, 1941, and this offer picks up all of the bids received during that period by the Panama Canal but not offered by the Commission.

I also offer Respondents' Exhibits, for identification,
193-A, C, D, E, F, H, K, L, M, N, O, P, Q, R, S, W,
X, Z, Z-1, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20,
5898 21, 22, 23, 25, 26, 29, 30, 31, 33, 34, 35, 36, 38, 40, and
41, being copies—

Trial Examiner Norwood: Off the record just a minute.

(Discussion off the record.)

Mr. Gilpatric: —being 47 reports prepared by salesmen and representatives of the Youngstown Sheet & Tube Company in the regular course of their business, as testified to by Mr. Holly when he was on the stand, relating to bids submitted by various Respondents and others in response to inquiries or invitations for the furnishing of rigid steel conduit circulated by the Tennessee Valley Authority, the Department of the Interior, the Bureau of Supplies and Accounts of the Navy Department—may I say parenthetically that none of these duplicate any of the bids to the Bureau of Supplies and Accounts put in by the Commission in its offer comprising Commission's Exhibits 335 through 364—various army and navy supply offices and various municipal authorities. Mr. Holly has testified that these reports were prepared in the ordinary course of business by representatives and salesmen of this Respondent, were contemporaneous records, and our position is that they are admissible under section 695 of the United States Judicial Code, Title 28.

I also offer as Respondents' Exhibit 335-A to 335-Z-196, copies of over 200 abstracts of bids for the furnish-
5899 ing of rigid steel conduit submitted by various of the Respondents in this case and others to the Procurement Division of the Treasury Department in New York City during the years 1939, 1940, and 1941, inclusive. These are 200-odd bids, and comprise approximately two-thirds of all of the bids to which we have been able to obtain access on the basis of information in our files, showing contract numbers, order numbers, and invitation numbers.

5900 As Mr. Van Der Beek, the representative of the Respondents who has prepared these abstracts, testified on February 3d, they are correct transcripts of the original records in the office of the Procurement Division of the Treasury to which the Commission's representatives had contemporaneous access. No file was taken down and submitted to our representative unless it was also made available to the Commission's representative.

Now, in making this offer, I make it subject to whatever check and verification Mr. MacIntyre wishes to make, and I ask that if he wants to make such verification before stating his objection, Your Honor defer the ruling.

Now, this offer of proof is relevant and material to this proceeding, we claim, with respect to two distinct issues;

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first of all, the allegation in the complaint that for substantial periods of time the Respondents used the so-called basing-point formula for calculating prices without deviation. We think this offer shows that at no period of time in issue in this case did the Respondents adhere to or use the basing-point formula without deviation.

Trial Examiner Norwood: Now, if the words "without deviation" are to be taken in the sense in which you apprehend there, isn't there considerable evidence in the record to refute that already?

Mr. Gilpatric: Oh, yes.

5901 Trial Examiner Norwood: Isn't there abundant evidence in there?

Mr. Gilpatric: In fact, we say there has been a complete failure of proof on the part of the Commission. That is one issue. But we say nothing can be more relevant and material to that issue than the showing which comprises this offer of proof, which are copies of official records of the United States Treasury, Procurement Division.

Now, the second and more basic issue to which we say this offer is relevant is the existence or non-existence of alleged conspiracy here, the inferences which the Commission will attempt—the attorney for the Commission will attempt—to have it draw from the existence of uniformity in public bidding, and all I need to do is to refer to the Commission's brief in the Cement case where that argument is made at great length, that the mere existence of a high degree of uniformity and identity in public bidding gives rise to an inference of collusion or agreement.

Now, we show that, taking a public office in one of the great conduit markets at which there was a great deal of competition, according to the record, over a three-year period out of the total number of bids of some 400, or slightly less than 400, there are over 200 comprised in this offer which are not in any way—do not in any way bear out that contention of uniformity.

5902 I might say as to the balance we are not offering all bids taken during that period. I have them here, they are available to Mr. MacIntyre: The reason I am not offering them is not because they hurt our case or help his contention, but simply because they may not be conclusive one way or another. The bids that are not offered are as a rule bids including, besides conduit, couplings, elbows, and other materials, all of which are included in

the lump sum prices which show substantial reductions or some reductions over the aggregate of the unit prices.

Now, it is impossible in some cases to tell from looking at these bids whether the reduction is due to discount or allowance on conduit or on some other item. If Mr. MacIntyre feels these should be offered, they are available to him for examination and whatever use he wants to make of them.

Now, one further explanation. In connection with the offer of Respondents' Exhibits 193-A through Z-41, the omissions from that offer, exclusions which I have made, have been copies of bids submitted to the Panama Canal and the Procurement Division of the Treasury in New York City which were eliminated simply to avoid duplication, the Panama Canal bids being included either in the Commission's Exhibits 318 through 330 or Respondents' Exhibits 1 through 21 and the Procurement Division
5903 bids being included in Respondents' offer for identification of Exhibit 335.

Trial Examiner Norwood: Excuse me just a minute.

(An interruption occurred.)

Trial Examiner Norwood: Proceed.

Mr. Gilpatric: That concludes my offer.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Any objections?

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Do you want to go back on the record?

Mr. MacIntyre: Yes.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: Referring to this Respondents' Exhibit 193, which is included in the pending offer, I state the same objections to it now that I stated when it was offered previously and contend that the same ruling should apply to it as applied when it was offered previously.

Mr. Gilpatric: It was not offered before. This is the first time that set of papers has been offered. It was marked for identification, but it was never offered until this time.

Mr. MacIntyre: Well, they were involved in an offer of like papers, which was rejected, and you then did not
5904 press the offer any further in the light of the ruling

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which was made upon similar documents, which were offered through the testimony of Mr. Holly and Mr. Newman in New York.

Mr. Gilpatric: This is using up a lot of record, but these documents were never offered before. They were marked before the controversy arose, and I carefully refrained from offering them until this time. I now offer them under section 695 of the Judicial Code.

Mr. MacIntyre: Section 695 does not and could not be considered as covering such an offering as this. If it did, then any writing of anyone, anywhere, connected with any private corporation anywhere in this country or in the world, could be admitted into evidence without a witness being produced to identify it, to tell anything about how it was produced, or what was behind it. Consequently, 695 is in no way applicable to this offer.

Furthermore, this offer is incompetent, irrelevant, and immaterial for other reasons. Among them, it does not go to any point of showing that the Respondents have not done what is alleged in the complaint that they have done; that is, used the basing-point system, and in a countless number of instances over substantial periods of time adhered to the use of it in making price quotations and in making sales pursuant to it.

The Respondents themselves have repudiated that 5905 type of testimony as is included in 193 through their offering and having received in evidence here tabulations showing that a substantial portion of all of their sales are made in accordance with the basing-point system.

As to their quotations—

Trial Examiner Norwood: Well, now—

Mr. MacIntyre: As to their quotations, nothing can deny what the documents in the record show on that, because it is undisputable.

Pardon me. I did not intend to interrupt what you started to say.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. Gilpatric: I would like this on the record.

Trial Examiner Norwood: On the record.

Mr. Gilpatric: I want to add to my statement as to the reasons for the offering of Respondents' Exhibit 193-A to Z-41, inclusive, we have not had the facilities nor the opportunity to make transcripts of every record of public

bidding in every public agency throughout the country to which these conduit manufacturers over a period of six years submitted bids.

We have given a complete picture of what one agency, one important agency, received, the Procurement Division of the Treasury, and we have also supplemented the
5906 Commission's showing on the Panama Canal reception of bids.

The purpose of offering 193-A to Z-41, inclusive, is to show that the bids were made on conduit to many other agencies throughout the country and that from the samples that are there included in those reports the inference could be drawn that the same picture would prevail as shown by the other conclusive and exhaustive showings by the other offers.

Mr. MacIntyre: I can well imagine what would happen here in the way of objections as well as rulings if the Trade Commission, for example, went out among federal agencies here and picked up reports from their employees as to what occurred at particular openings that had been made, instead of having official transcripts, and instead of having the man who made the official transcript come in and identify them.

Trial Examiner Norwood: I think there is a difference—

Mr. MacIntyre: The thing we did not do.

Trial Examiner Norwood: I think there is a difference between Respondents' Exhibit 193-A to Z-41, for identification, and these tabulations that are made directly from these documents in custody of the Government and have been verified by sworn testimony here as to their accuracy by the man who made them. I think there is a difference.

I am going to distinguish between them, anyway. I
5907 have excluded documents that are of the same character as this 193, and I am going to sustain the objection to that.

Now, as for these others—

Mr. MacIntyre: Well, I have not made any statement on that, and I would like to be heard before you rule.

Trial Examiner Norwood: I will hear you as to these others.

Mr. MacIntyre: I want to say as to Respondents' Exhibit 335 that it is being offered here as a booklet of information compiled by, as we have been told, Mr. Van Der Beek. They have been compiled by him, according to the

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information that we have, since he came here on the stand, in large part. We have not had any opportunity to question him about any of the information that is appearing in these, because we have not had the tabulations until this morning, just less than a half hour ago. We never saw them before that. Consequently, we could not have cross-examined him on that before this.

He is not brought here. I informed Respondents yesterday, when I understood that they were not likely to bring him here, and I assumed that they probably would not bring him here, that I would object to anything of his that was offered unless they did have him here so that I could cross-examine him on any of his tabulations when and if offered.

5908 I don't think that it is proper that it be offered in the absence of a witness this way, and especially when it is such a book of information and of such importance as Respondents consider it to be to them and to this case.

I also object to it on other grounds as to its competency and as to irrelevancy and immateriality.

It is clear from the statement made by Mr. Gilpatric that there can be no measure made from this batch of information as to what percentage, if any, of the total bids which were submitted by these people in any period of time were of like character; and in the absence of ability to so measure them, they are absolutely worthless for the purpose for which Mr. Gilpatric says he is offering them.

They are incompetent, irrelevant, and immaterial for those reasons, and others, and I object to them.

Trial Examiner Norwood: I just simply have a hazy recollection of this witness being on the stand and giving us some details of his tabulations here, but, as the counsel says, the tabulations themselves were not here for him to be questioned about.

Mr. Gilpatric: Well, on that point, Mr. Examiner, Mr. Van Der Beek was here for two hours under examination by Respondents and by Mr. MacIntyre. At that time he had started on the work, which is represented by Re-

5909 spondents' offer of Exhibit 335. He testified fully as to the methods that he employed in copying out those transcripts.

The record also shows that at all times that he was working there there was a representative of the Commis-

sion either in the same room or in the same office, or that, in any event arrangements had been made with the official in charge of the office that every single file that was taken down that was shown to the Respondents' representative, Mr. Van Der Beek, would also be shown to Mr. MacIntyre.

Now, it seems to me an utterly profitless and futile and unnecessary burden on the Respondents for us to bring Mr. Van Der Beek down here again to go over that ground.

What I have offered here, and I think it is very fair and reasonable, is to submit this to Mr. MacIntyre for his examination and defer your ruling on the offer until he has had a chance to check it with his people, who checked the records themselves. That is all we need to do. We do not need to go over with Mr. Van Der Beek the same ground again.

Mr. MacIntyre: Well, I certainly ask, if there is any serious consideration being given to the admissibility of this, that I be given an opportunity to check it, that is, before Mr. Van Der Beek is produced here for cross-examination, and that it most certainly not be received at all without the opportunity of cross-examination.

Trial Examiner Norwood: Well, I shall defer the ruling on that until the counsel for the Commission can
5910 study it, and then I think if counsel for the Commission insists on it, we will have to bring the witness here to be cross-examined on these particular papers, which counsel for the Commission has not seen before.

Mr. Gilpatric: All we are offering is copies of public records in public files. All this witness, Mr. Van Der Beek, did—

Trial Examiner Norwood: It is a tabulation from those records, is it not?

Mr. Gilpatric: It is a copy. He simply sat down and copied off numbers. He told us all about that.

If you tell us to produce him we will do it, because we will press this offer, but I think it is simply wool gathering on the part of the attorney for the Commission.

Trial Examiner Norwood: Well, the question will arise, are they complete copies, are they extracts, or just what are they?

Mr. Gilpatric: Well, Mr. MacIntyre's examination from the man who was there will dispose of that.

Trial Examiner Norwood: All right. I just said if

he insisted on it I would make that a condition, in case I find that they are receivable from other considerations.

Mr. Bozeman: I would like to say, Your Honor, that our clients furnished Mr. Van Der Beek's services in
5911 connection with this job, and it was clearly understood between us and Mr. MacIntyre, and it is certainly my understanding, that the whole purpose of arranging for the presence of his representatives at the time Mr. Van Der Beek made his examination of these documents was to obviate the very thing that he is now requesting. There isn't any doubt in my mind that that was the purpose of it. If it was not the purpose in his mind, then I simply was deceived, because there is no logic in having those fellows there unless the purpose was to get rid of all of the disputes and arguments that usually accompany the offer of tabulations of this type.

If Your Honor suggests that we bring Mr. Van Der Beek here, certainly all that he would be questioned about regarding these documents would be just simply about the accuracy of the figures. Apparently from statements Mr. MacIntyre made he wants to cross-examine him on something else.

Trial Examiner Norwood: Well, I will have counsel confer. Now I will defer the ruling on it, and you can settle the rest of it off the record.

Anything further?

5912 RESPONDENTS' EXHIBITS NOS. 1 to 21, both inclusive, were offered and received in evidence.

5913 Trial Examiner Norwood: Off the record now.

(Discussion off the record.)

Trial Examiner Norwood: We will recess till 2 o'clock.

(Whereupon, at 11:50 o'clock a. m., a recess was taken until 2 o'clock p. m. of the same day.)

5914 Afternoon Session

2 P. M.
Room 388.

Trial Examiner Norwood: The hearing will come to order.

Respecting this Commission's Exhibit 764-A to K, the objection is overruled and it is received in evidence.

COMMISSION'S EXHIBIT NO. 764-A to 764-K was offered and received in evidence.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back to the record.

With respect to the proffer of Respondents' Exhibit 335-A to Z-196, for identification, the objection is sustained and the Respondents have the benefit of their exception.

Mr. Bozeman: All right.

Now, may I go off the record a minute?

Trial Examiner Norwood: What?

Mr. Bozeman: May I go off the record a minute?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. MacIntyre: I would like to call as the next witness Mr. Rougeou.

5915 CHARLES F. ROUGEOU was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Trial Examiner Norwood: Give me your full name, please.

The Witness: Charles F. Rougeou.

Trial Examiner Norwood: Proceed.

Direct Examination by Mr. MacIntyre.

Q. Mr. Rougeou, will you please state the nature of your occupation and tell us what your position and occupation is?

A. I am an employee of the Federal Trade Commission in Washington. I am a special agent.

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Q. What is the nature of your duties? Does it include the examination of documents?

A. It does.

Q. How long have you been so employed?

A. Since the creation of the Federal Trade Commission, 1914.

Q. Have you in connection with the performance of those duties made any examination of Respondents' Exhibit 293-A to Z-80, and Respondents' Exhibit for Identification 295?

A. I have.

Q. Did you make an examination of the documents marked for identification as Respondents' Exhibit 295 for the purpose of determining whether they are accurately listed as indicated on Respondents' Exhibit 293-A to Z-80?

5916 A. I did.

Q. Did you find all of the documents in 295 listed in Respondents' Exhibit 293-A to Z-80?

A. I did not.

Q. Will you state as closely as you can the number that you did not find listed; that is, the number of the documents in Respondents' Exhibit 295, for identification, which were not listed on Respondents' Exhibit 293-A to Z-80?

A. I did not count them, but there were about 250 that were not found.

Q. Listed in 293?

A. Yes.

Mr. Austin: . If Your Honor please, I move to strike the question and the answer on the ground that the question called for figures. The answer specifically stated he had not counted them and then gave figures.

Trial Examiner Norwood: Read the question and the answer.

(Last two questions and answers read.)

Mr. Austin: There is a question and answer there subsequent to the question and answer to which I am directing my objection, and I would like to amend the motion, with your permission, and move to strike from the answer beginning "I did not count them" all language thereafter, so that the answer would read "I did not

5917 count them." That is the answer to the question.

Trial Examiner Norwood: Well, the answer that

he read to me there had an estimate there of about 250. Can't he express his estimate in figures?

Mr. Austin: If you rule that way, he can.

Trial Examiner Norwood: I think he can. You may cross-examine him on it.

Motion denied.

By Mr. MacIntyre:

Q. As to those documents included in Respondents' Exhibit 295, for identification, which were listed in Respondents' Exhibit 293-A to Z-80, did you find the amounts at which rigid steel conduit had been sold as disclosed by the faces of the documents in 295, for identification, to have been accurately stated in Respondents' Exhibit 293-A to Z-80?

Mr. Stewart: I should like to offer an objection. Unless the instances are pointed out, I object to any general statement. I think that that ought to be specific, if that is going to be the answer, that he did.

By Mr. MacIntyre:

Q. I will ask him, first, if there was any instance where he found that to be the case.

A. There were.

Q. Will you state whether or not that those instances were substantial in number?

5918 A. They were, very much so.

Q. In your examination of the documents included in Respondents' Exhibit, for identification, 295, and which are listed in Respondents' Exhibit 293-A to Z-80, did you find the amounts listed in 293 to have been, as to any instance, an amount listed on the face of a document in Respondents' Exhibit 295, for identification, as including material other than rigid steel conduit?

A. There were.

Q. Was there any substantial number of those instances of that character?

A. There was about one-third of them.

Mr. MacIntyre: I believe that is all.

Trial Examiner Norwood: Examine him.

Mr. Austin: No cross.

Mr. Robison: May I have the last question and answer read?

Trial Examiner Norwood: Read it.

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Mr. Robison: I did not get the full purport of it.
(Last two questions and answers read.)

By Mr. MacIntyre:

Q. When you say one-third, you mean one-third of the total number of the documents listed in Respondents' Exhibit 293-A to Z-80?

A. Yes, sir.

5919 Mr. MacIntyre: That is all.

Mr. Robison: Just a minute, please.

Mr. Stewart: Just a moment.

What are these documents, 295—

The Witness: They are—

Mr. MacItyre: That is this whole pack of documents.

Mr. Stewart: I want to find out from him.

Mr. MacIntyre: Oh, you are cross-examining him. All right.

The Witness: Invoices from Westinghouse.

Cross-Examination by Mr. Stewart.

Q. And how many documents are there?

A. That would be only a guess, Mr. Stewart, if I made that.

Q. Well, what I am trying to get at is, you don't know how many documents there are and, therefore, when you have given us these relative figures, by the same token, it is a guess; is that right?

A. No. No. The figures are an estimate. The other, of course, I admitted that would be a guess wholly. Probably 5,000.

Q. I know, but when you say that a substantial number are not on 293, is that a guess, too?

A. No. That is an estimate.

5920 Q. What is the difference between an estimate and a guess?

A. Well, I worked over those so thoroughly that I am very familiar with the number appearing on the document. There are about 27 on each page, and to look down the page you can see the number that were not—other than conduit in them and then those that had conduit only. The eye becomes very familiar with things of that kind after you survey them enough.

By Mr. Robison:

Q. Mr.—

A. Rougeou.

Q. —Rougeou, you understand, do you, as I do—I want to see if we are in agreement—that the purpose of Exhibit 293-A to Z-80 was to show concerning the invoices to which reference is made there whether conduit had been sold at the card price or off the card price, whether it was at or off?

A. That had nothing to do with it, sir, not to my knowledge.

Q. Had nothing to do with this?

A. Had nothing to do with it in my mind, sir.

Q. No. I am asking you whether you understand that that was the nature of the showing that was made in Exhibit 293-A to Z-80?

A. I would have no idea of it.

Q. You know nothing about that?

A. No. My job was only to find out if those listed were as shown on that document.

5921 Q. Well, but this document does show—has a heading of one column on each page "on card," and has another heading "off card"; does it not?

A. Yes.

Q. Well, what do you mean when you say that your job was to see whether the items listed were as shown?

A. Yes.

Q. In what respect?

A. Is just as is shown there. Those amounts here were the amounts on the invoices.

Q. Oh, you merely checked the amounts that are listed in Exhibit—

A. Yes, sir.

Q. —293-A to Z-80? And you did not consider whether any amount shown on that exhibit was properly listed in the column headed "on card" if it was there listed, or whether it was properly listed in the column headed "off card" if it was there listed?

A. Had no way of finding that out at all, sir.

Q. And you did not try to?

A. No, sir.

Q. Well, what was the significance, then, of your saying that some of these invoices which are included in 295, for identification, were for other items than for conduit?

A. Well, they had couplings and elbows in there as
5922 well as the conduit.

Q. And—

A. In those amounts shown on the exhibit as listed there.

Q. You mean some of the amounts shown in Exhibit 293-A to Z-80 included charges for commodities other than conduit which may have been elbows and couplings and so on; is that right?

A. Couldn't call them charges. We could call them the amounts. I think that would be better because—

Q. Well, you understand these are invoices; don't you?

A. Yes, put on here the amounts shown on there. You see,—

Q. No. No. Now—

A. —this A did not include all the others or all the amounts on the invoices as a whole. Only the amounts of the conduit and elbows and couplings that were taken and shown in here. We didn't try to list on this tabulation all of the invoices by any means.

Q. I am afraid I don't see at all, Mr. Rougeou.

A. Well, you—

Q. Well, just let me see if I can get it. You sit down, will you? See if I can get at it.

As I understand, what you have now undertaken to tell me is that there are some invoices included in these two stacks here which are represented by the number 295, for identification, which are not listed at all in Exhibit 293-A to Z-80?

5923 A. Yes, sir.

Q. Now, is that right, thus far?

A. Yes.

Q. Now, that is part of what you were trying to tell me?

A. Yes, sir.

Q. Now, we will leave those out of consideration and, having in mind now the others which are listed here, when you found an amount listed on Exhibit 293-A to Z-80 as against any given invoice identified by its date—

A. Date of the invoice, sir.

Q. As identified by its date; is that right?

A. Yes.

Q. —now was the amount that was so listed the amount shown on the invoice as charges for conduit, or was it an amount shown as charges for conduit and other items?

A. In some cases for conduit only. In other cases for conduit and other articles.

Q. And when you referred in your direct examination to about one-third of a total, did that have reference to those items shown in Exhibit 293-A to Z-80 which you say reflect amounts which include other commodities than conduit?

A. Yes, sir.

Q. About one-third of them?

A. Yes, sir.

Q. Did you make any of these red pencil marks?

5924 A. I made them all, sir.

Q. All these red pencil marks. And where there was just a check mark in red pencil, does that indicate that you found the amount correctly stated as reflecting charges for conduit?

A. Only; yes, sir.

Q. And where you put a cross-mark, what did that indicate?

A. That indicated where there was other stuff than conduit.

Q. And in arriving at your figure or estimate or whatever it was when you said about one-third, did you count up the number of your red crosses and compare it with the number of your red checks?

A. I did not.

Q. So that when you say one-third, it is just a rough offhand estimate on your part; is that correct?

A. I wouldn't call it a rough estimate because I went over them all and that was set pretty fairly in my mind as to the exactness of my figure.

Q. Well, now, I am not going to ask you to at this point take time to count on any considerable number of pages the number of check marks as against the number of "X's," both being in red, as you have indicated, but I am going to call your attention to 293-C, and, using that page as a sample, tell us how many items there were against which you put "X" marks as compared with the number against which you put checks.

Mr. MacIntyre: I object. The page is in evidence.

5925 It shows how many that have the X's and how many have the other marks, and it can be compared with the other pages that also carry check marks and X's.

Trial Examiner Norwood: Read the question.

(Question read.)

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Mr. MacIntyre: A single page like that. It is irrelevant and immaterial.

Mr. Robison: I am asking him about something which is no part of the exhibit as introduced.

The Witness: Mr. MacIntyre, let me answer that.

Mr. Robison: This exhibit has been modified since it was put in evidence.

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. Twenty-seven lines on that page, twenty-seven items. There is nine of them checked and eighteen of them not checked. That makes exactly 33⅓ percent of them that were checked.

By Mr. Robison:

Q. Now, what do you mean when you say nine that were checked? Do you mean that the mark was put against them?

A. There is nine of them that are not listed as containing other than—this one (indicating). Twenty-seven items on the page.

Q. You mean that you counted nine "X" marks in red put on by you and eighteen check marks in red put
5926 on by you; is that right?

A. Yes.

Q. Now, let us take another page. Let us take page 293-E, and give us the same details with reference to that page.

Mr. MacIntyre: I object to that. The page is in evidence.

Trial Examiner Norwood: Well—

Mr. Robison: These marks were no part of the page that was put in evidence, Mr. Examiner.

Trial Examiner Norwood: What is that?

Mr. Robison: These marks that the witness has testified to were no part of the page that was put in evidence. This is something that was put on by the witness.

Mr. Gilpatric: I would like to inquire by what right can anybody come along and mark up an exhibit in evidence?

Trial Examiner Norwood: It was received subject to check, and he has checked it.

Mr. Gilpatric: He can put on anything he wants?

Trial Examiner Norwood: He is explaining these marks. The marks that are on there are on the exhibit, and I sup-

pose that the Commission's counsel wants to offer them in evidence at this time, after he identifies them.

Mr. Stewart: This is an exhibit which is in evidence. They are there. You can't get them off.

5927 Trial Examiner Norwood: Well, they are subject to check. I do not see anything improper about making the checks on them.

Mr. Austin: If Your Honor please, when you offer an exhibit subject to check, are you offering it subject to change or are you offering it subject to finding any errors in it?

Trial Examiner Norwood: Has the exhibit been changed or just checked?

Mr. Austin: It seems to me it has been changed.

Trial Examiner Norwood: Has counsel seen it?

Mr. Austin: I have listened to the description of it.

Trial Examiner Norwood: Well, I think you will find that it was checked. In the course of the operation of checking it I suppose it was changed.

Mr. MacIntyre: Well, I will admit that the exhibit has been changed if the placing of check marks in the course of checking it changes the exhibit.

Mr. Austin: Thank you.

Mr. Robison: May we have an answer to the question?

Trial Examiner Norwood: Read the question.

(Question read as follows:

"Let us take page 293-E, and give us the same details with reference to that page.")

5928 Trial Examiner Norwood: Answer the question. Objection overruled.

A. There are two check marks on that as not appearing.

By Mr. Robison:

Q. Well, now, you and I apparently do not use the same language in that connection, Mr. Rougeou. I call a check mark—I don't know how to describe it, but a mark that resembles a "V," and where it is a cross I call it an "X."

A. Yes.

Q. Well, now, when you said "check" you meant the "X" mark, didn't you?

A. No, I did not.

Q. You said there are two that are checked.

A. Two that are not checked. I should have said "not" if I did not.

Q. All right. Well, I will just call your attention to one more.

Give us the same details concerning page 293-H, please.

A. There are four on that page that are not checked.

Q. Out of a total of how many?

A. Twenty-seven.

Trial Examiner Norwood: Now, do these four have "X" marks?

The Witness: Yes, sir.

5929 Trial Examiner Norwood: I see. And the others that have a mark resembling a "V," are those marks that you made?

The Witness: Yes, sir.

Trial Examiner Norwood: And you refer to those as check marks; do you?

Trial Examiner Norwood: Yes.

Mr. Robison: I have no further questions.

Trial Examiner Norwood: Now, will you look through that exhibit and tell me if you can identify all those check marks and "X" marks as ones that you have put on there?

The Witness: Yes, they are.

Trial Examiner Norwood: Yes.

By Mr. Stewart:

Q. Mr. Rougeou, I would like to ask you this: Assuming, now, that this Exhibit 293-A to Z-80 was offered simply for the purpose of showing the sales on or off the card, as indicated in the documents Exhibit 295, you, of course, know nothing about that subject?

A. No, sir.

Q. And even where these items which are shown by an "X" are supposed to have included items other than conduit, what was the purpose in checking to ascertain that fact? What were your instructions?

A. I wanted to show those—or distinguish those 5930 that had conduit only from those that had other than conduit in them.

Q. You assumed that they were not—

A. I don't know anything at all about that. They are just the amounts. These figures listed, they are supposed to include conduit only, and I went through to make sure that they did include conduit only, and I found those that had other than conduit in them, and I indicated that by an "X."

Q. What I am trying to get at is, why is it you were to assume that they were to include conduit only?

A. I did not assume that; that is a fact.

Q. What I am trying to get at is, how did you understand that they were only supposed to be conduit? That is what I am trying to find out.

A. Well, that is the thought that I went through those invoices for, to find out if they all included conduit only or if they had other than conduit in there, and the only way I had of determining those was by checking them, and each and every one of them was checked individually.

Q. I understand that, but what I am trying to find out is, who is the father of this thought to ascertain whether they were only conduit or if they had other than conduit?

A. Mr. MacIntyre.

Q. That is what I am trying to find out.

That is all. Thank you.

Trial Examiner Norwood: Any further cross?

5931 Mr. MacIntyre: I have two or three questions.

Redirect Examination by Mr. MacIntyre.

Q. Mr. Rougeou, calling your attention to this page in Respondents' Exhibit 293, that is, the page that is marked 293-Z-72, to which Mr. Robison directed your attention, how many invoices listed thereon, that is, amounts of invoices, did you find that you placed check marks opposite?

A. Five.

Q. They are the only ones of the invoices listed on there that you found that related purely to conduit, and the amounts were correct; is that correct?

A. That is right, sir.

Q. Now, in a number of instances through this exhibit, Respondents' Exhibit 293-A to Z-80, are found amounts which have no check mark and no other mark in red placed there by you. What, if anything, does that indicate with respect to the examination that you have made of it and your examination of Respondents' Exhibit, for identification, 295?

A. There were no invoices to be found that were checked with those amounts.

Mr. MacIntyre: I believe that is all from Mr. Rougeou.

Trial Examiner Norwood: You are excused.

(Witness excused.)

5932 Mr. MacIntyre: Now, if Your Honor please, I move that Respondents' Exhibit 293-A to Z-80 be stricken from the record. It has been demonstrated here that this exhibit is substantially erroneous. It is, therefore, unreliable for any consideration for the purposes for which it was stated that it was offered for the record. It can serve no purpose in the record such as has been indicated.

Trial Examiner Norwood: Motion denied.

I shall study it, and if I find it is of no value I shall entertain a motion to strike it later.

Mr. MacIntyre: If in the event, after you study it, you find it is not to be stricken, then I ask that these check marks and cross-marks in red pencil which have been placed alongside these amounts by Mr. Rougeou in connection with his study and examination of these exhibits be considered a part of the exhibit, if it remains in evidence.

Mr. Robison: I join in that motion, Mr. Examiner.

Trial Examiner Norwood: Motion allowed.

The check marks about which the witness has testified here are part of that exhibit, and that is one reason I did not consider seriously striking the exhibit. It is there for study. I do not think I should prejudge the exhibit.

Mr. MacIntyre: But, if Your Honor please, the question of the motion to strike the exhibit goes to this:

5933 When this was offered it was offered with the statement that the amounts in one column showed the amounts of conduit in terms of dollars and cents which had been sold at card prices and also stacked up against that quantity of conduit in terms of dollars and cents which are claimed to be sold off the card.

Now, if such a great quantity of conduit as is involved in this check in the manner that the examination has disclosed, and which the amount listed in Respondents' Exhibit 293 does not apply only to conduit, but to bushings, couplings, elbows, and other items, then the amount that is listed on this exhibit as being an off-card amount of conduit in terms of dollars and cents is incorrect, and therefore changes the entire complexion of the exhibit.

Trial Examiner Norwood: Now, wait a minute. The counsel is out of order. I have ruled on this thing, and it is in evidence, and we don't know just how it goes to its weight, or what you are urging here may go to the percent-

age of it. It may be a little different percentage than what is figured out there. I am not prepared to say at all. But it is in there for study. I have already ruled. It shall stay in for the time being.

Mr. MacIntyre: What I was trying to make clear is just this, that the exhibit itself, aside from all of these invoices, cannot tell you whether there is 10 percent off the
5934 card, or 90 percent, which they claim.

Trial Examiner Norwood: Well—

Mr. MacIntyre: And it is so substantial that the exhibit itself is confusing.

Trial Examiner Norwood: Well, you may be able to demonstrate that it is valueless as evidence, but it will have to be done after a study.

Proceed.

Mr. MacIntyre: Well, I have no more factual evidence to offer in this case, unless I am to meet some that is yet to be received on behalf of the Respondents. I do, however, have some expert opinion testimony that I propose to offer, and I have asked a witness to come and start giving us that Tuesday morning.

Trial Examiner Norwood: Yes.

Mr. Stewart: Now, Mr. Examiner, I am wondering. Where you have expert witnesses and you propose asking a long hypothetical question, it has been my experience, and it is not at all unusual,—in fact, the courts usually have required either side to submit that hypothetical question to the other side some time in advance, so that you are not caught with a long involved question, and you have to make up your mind when the question is submitted whether to object to it. I am just wondering whether Mr. MacIntyre cannot accommodate us to that extent, and certainly you as well.

5935 Trial Examiner Norwood: Yes.

Mr. Stewart: Because we will sit there and have a debate on it, or have to take the time.

Trial Examiner Norwood: Well, we have no rule that he has to submit it at any time in advance, and not even in writing, unless the other side requests it or the Trial Examiner requests it; but I do not request that any extensive hypothetical questions that are going to be asked be written out and copies given to us at the Commission's attorney's early convenience. It need not necessarily precede the hearing by any number of days.

Mr. Stewart: No, I don't mean that, but I mean in the morning, something like that.

Trial Examiner Norwood: Now, off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back to the record.

5936 (Whereupon, at 3:35 o'clock p. m., March 3, 1942, the hearing in the above-entitled matter was adjourned.)

5938 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on March 3d, hearing in Docket 4452 is now reconvened in Room 532, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., on March 10th.

Please note the appearances.

Mr. MacIntyre: May we proceed?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: I call as the next witness for the Commission Professor Gray.

Trial Examiner Norwood: You have your subpoena, Doctor?

Mr. Gray: Yes (handing a document to the Trial Examiner).

Trial Examiner Norwood: Horace M. Gray.

Mr. Stewart: Gray?

Trial Examiner Norwood: G-r-a-y.

Will you stand up and hold up your right hand, please, sir.

HORACE M. GRAY was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

5939 Trial Examiner Norwood: Proceed.

Direct Examination by Mr. MacIntyre.

Q. Professor Gray, I am handing you a statement, which is entitled "Statement of Qualifications of Horace M. Gray as an Economic Expert." I will ask you if you have read that statement.

A. Yes, I have read it.

Q. Is it a correct statement of your qualifications as an economic expert?

A. Yes, it is correct.

Mr. MacIntyre: I ask that the Reporter copy this into the record.

Trial Examiner Norwood: It may be copied.

At present time I am Professor of Economic and Assistant Dean of the Graduate School at the University of Illinois, Urbana, Illinois. I received my academic training at the Eastern Illinois State Teachers College and at the University of Illinois. My academic degrees were conferred by the latter institution as follows: B. S. in 1922, M. S. in 1923, and Ph. D. in 1926.

I began my teaching career in February, 1922, as a teacher of Accounting at the University of Illinois. In 1923

I transferred to the Department of Economics at the
5940 same University and since that date have taught continuously in the Economics Department and have passed through the various academic ranks from Instructor to Professor of Economics. During these years I have taught courses in General Economics, Corporation Finance, Investments, Trusts and Monopolies, Transportation, Public Utilities, and Public Control of Business. In addition to my teaching duties, I have devoted a considerable portion of my time since 1927 to directing the research studies of graduate students in economics, primarily in various phases of corporation and monopoly problems.

For the past three years I have given part of my time, approximately one-third, to administrative work in connection with the Graduate School at the University of Illinois. My writings on economic subjects consist of specialized articles in such journals as the American Economic Review and the Journal of Land and Public Utility Economics. My public services have been largely concerned with municipal affairs, Civil Service, Social Security and public utility regulation within my own state. As for the problem of the basing point system of delivered prices quotations, I first became interested in it when I was a graduate student, have followed the literature dealing with it from the time of the Pittsburgh Plus Case to the present, and have given attention to it for nearly twenty years in my research and teaching.

5941 Mr. MacIntyre: I tender the witness as an economic expert.

Trial Examiner Norwood: He is so received.

By Mr. MacIntyre:

Q. Professor Gray, what, in your opinion as an economist, is the proper meaning of the term "market" as it is used in economic theory?

A. Why, I should define a market as the place where buyers and sellers meet for the purpose of exchanging goods. It is sometimes said that a market is a place where forces of supply and demand meet, or converge. The essential element there is a place where buyers and sellers do meet for exchange of goods.

Q. What, if any, relation does it have to supply and demand?

A. Well, the sellers, of course, represent the supply side situation, and the buyers represent the demand side, and the activity that takes place in a market results in the equation of these two forces in the determination of a price.

Q. Now, you have spoken about a market being a place. Do you distinguish between "place" and "area", market place and market area?

A. Yes, I do make such a distinction.

I have already defined a market as a place where buyers and sellers meet. Now, around this market place or
5942 center there would be adjacent territory or area from which the buyers and sellers come. That is called a market area, sometimes referred to as a tributary area of a market.

Q. In order to constitute a market must the buyers and sellers meet in person?

A. No, not necessarily. They might meet in person or by means of responsible agents who would carry on the bargaining transactions.

Q. What is the nature of the price or prices which eventuate in the market place, that is, the comparison of one as charged by one seller and as charged by another seller?

Mr. Stewart: May I have the question again?

(Question read.)

A. Well, the price which would be determined in such a market would be called a free competitive price, meaning the price had been determined by the free, uncontrolled operations of the buyers and sellers.

Q. Would there be any tendency towards uniformity of price in the market place?

A. Yes. A price so determined would be a uniform

price; or it would—it would be somewhat more apt to say it would tend toward uniformity.

Q. Do you mean to say by that that this uniform price prevails at each particular point or destination throughout the surrounding market area?

5943 Mr. Gilpatric: I object to the question as leading.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Sustained.

By Mr. MacIntyre:

Q. Over what area would the uniformity of price about which you have spoken apply, Professor?

A. Well, this uniformity of price of which I have spoken occurs in the market place. It can only refer to the price determined in a free market. Then, moving out from that market place, goods would bear an increased cost due to the cost of transportation from the market place out to destination. So that the general pattern is a uniform price in your central market plus added cost outward as goods move out from that center, the added cost being due to transportation, with the result that at a particular destination somewhat removed from the market the price will be the uniform market price plus the cost of transportation from that market to the place of destination.

Now, it would follow that any two destinations of different distances from the market—that the delivered cost at those destinations would differ because the freight would differ, but there would be no difference in the basic price itself. That would be uniform, but the cost of trans-

5944 portation would differ from the market to different destinations.

Trial Examiner Norwood: Now, would those two different destinations, according to your definition of a market be included in the market area?

The Witness: They would be within the area but not within the market place or center.

By Mr. MacIntyre:

Q. What determines the limits of the boundaries of a market area about which you have been speaking, Professor?

A. Well, as I have already indicated, the cost of transportation outward from a market increases normally with the distance, and sellers in that market can distribute their

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goods outward to a point where they come into contact, into competition, with producers from other centers who are distributing goods toward them, and where these two movements meet you will have a margin or a boundary which is sometimes referred to as the geographic boundary of the market. Now, it would be impossible for any seller in a given market to extend his scope of distribution beyond this geographic limit, because if he did so or attempted to do so he would incur added costs and he would then be at a disadvantage with respect to sellers in other markets. So, along this boundary, this geographic line of demarcation between the two adjacent markets, he would have a state of very active competition because the boundary is not fixed and absolute at all. It changes with
5945 changing cost factors.

Q. Well, this limitation about which you have been speaking of the market area, that is, limited by necessary cost of transportation, is that limitation generally recognized by economists?

A. Yes, I should say so. That is a very elementary principle. That is recognized by all economists and it is set out in all general works on economics. In fact, it is so common that you will find some authors referring to such a situation as a natural market area. Now, that term is somewhat questioned in modern literature, but it has some applicability to the present—or to this situation because each of these market areas is limited by this principal cost factor of transportation. Now, so long as there is no artificial element of restraint there one could say that each market area is limited by the natural factors; that is, the cost of transportation.

Q. Could, then, this market area, that is, which you call a natural market area, be coextensive with the entire geographic area over which any particular manufacturer may desire to sell and ship his product?

A. No, it could not be, but I have already indicated that each seller, in attempting to move his goods outward from the market center, comes in contact and competition with producers from other centers. Now, he couldn't go beyond that margin even if he wanted to, because
5946 in doing so he would incur these added costs and would thereby be put at a disadvantage as a—compared with other producers, so that even though he might desire to extend his area of operations over the entire

nation, or even entire world, for that matter, he simply can't do it under normal competitive conditions.

Q. Well, now, using this term "market place," as you have used it, where buyers and sellers meet, is it possible for a market to exist at the destination where any particular buyer is located?

A. No. It would seem to me that a market could not exist under such conditions. The buyers and sellers must come together, otherwise you can't have a market in the true economic sense, and to say that a—every possible destination at which buyers might reside or do business constitutes a market is to disperse your market, or at least one side of your market, that is, the demand side is so widely dispersed that the whole concept of a market is destroyed.

Trial Examiner Norwood: Would that be any different if individual buyers and sellers meet at these destinations; that is, the individual seller's salesman meets the buyer there?

The Witness: No. No, that still would not meet the economic test of a true market.

By Mr. MacIntyre:

5947 Q. Do you mean to say, then, that a single buyer at some particular destination could not constitute a market?

A. Yes. That was the import of my answer, that the—a single buyer at a particular destination is—is not a market, and to say that such a situation would constitute a market seems to me to destroy the whole concept of a market, and it is really an absurdity, so far as economic theory is concerned.

Q. Is it your opinion, then, that to pick out some one buyer of rigid steel conduit and say that that one buyer constituted a market for rigid steel conduit is to use the term "market" in a different sense than it is properly used in the price analysis of economic theory?

A. Yes, it is using the term in quite a different sense from what you find in economic discussions. It is a sort of a popularization of a term and using it in a very loose sense, but it certainly is not a usage that is generally recognized in economic teachings.

Q. Can you give us any other reasons as to why, in your opinion, economic theory does not accept such a concept of a market?

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A. Well, this concept, if actually applied, would be—would be equivalent to a complete destruction of the market. In effect you have taken one side of the market, namely, the demand side, and have dispersed or
5948 scattered it. Now, to say that a market is a place where the forces of demand and supply meet and then to turn around and disperse one-half of that equation, namely, the demand side, to the four winds of heaven is what led me to say that it was an absurdity. Simply destroys your whole concept of a market.

Q. Would you say that the law of uniform price as an economic principle has any significance with the term "market" used as I have suggested to mean the location of one buyer?

A. No. No. If you use "market" to mean the location of one buyer, then that buyer, being isolated from the market, not being in a position to participate in the activities of the market, or to influence the decisions of the market, would have no influence on price, and under such a scheme of things you could not have a uniform price in the sense which economists use the term, because the forces necessary for the determination of such a price are missing.

Q. Using the term "market" as you have defined it, are separate markets related to each other?

A. Yes.

Q. How?

A. Well, in a free economy—

Mr. Stewart: What was the question, please?

Trial Examiner Norwood: Read it.

(Question read.)

5949 The Witness: Yes. In a free economy, where we assume that men are free to move about, to ship from one market to another, to transport goods freely, it would necessarily follow that two adjacent markets would be related, if the prices in one would be related to prices in another, because people could move from one market to the other, or goods could be moved from one market to the other.

By Mr. MacIntyre:

Q. Are you acquainted with the terms "surplus area" and "deficit area" and, correspondingly, "surplus market" and "deficit market"?

A. Yes. I should say those terms are quite frequently used in the literature.

Q. What do they mean?

A. Well, I should define a surplus area as one which under a given set of price conditions you would have in this area a surplus of goods, that is, an amount which could not be sold in that particular area at the assumed price; whereas in a deficit area you would have just the opposite. At the given price level there would not be sufficient goods in that deficit area to supply the demand at that price. It is important to define those terms or those concepts of surplus and deficit area in terms of the price situation.

Q. Is it a part of economic theory that the phenomena you have described would cause a flow of the com-
5950 modity involved from one market to the other?

A. Yes. In a free economy goods would normally move from a surplus to the deficit areas.

Q. Would that flow be continuous?

A. Yes, it would tend to be so long as the basic supply and demand situations remain the same. Of course, over a period of time those might change, and the nature of your areas might change, but under the assumed conditions at a given time the flow of goods would continue.

Q. Would the differential in price which played a part in causing the flow tend to remain above the cost of transportation between the two areas, locations?

A. No. Assuming the absence of any restricting factors, the differential would tend to be the equivalent to the cost of transportation between the two markets.

Q. What is meant by the term "forestalling"?

A. The term "forestalling" is a very old term that comes down to us from the experience of early English markets. It meant in those days that certain individuals would go out from the usual market centers to intercept goods that were in transit to the market, and meeting the producers who were coming to the market at some distance away, they would buy the goods being brought to market, very frequently on their own terms, or on terms different from what might otherwise have been the situation in the central market.

5951 Well, this practice was regarded with considerable hostility by our forefathers, because they seemed to have felt that the activity of these forestallers was a disruptive element in the market. It prevented the people who had goods to sell from bringing them to the market;

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thereby it tended to disintegrate the market as such. Buyers and sellers never met in the complete sense which they would in a competitive market. So very severe laws were passed to prevent this practice of forestalling.

Now, in the modern scene we have similar situations, where various devices are used to prevent this meeting, or converging, of demand and supply forces in the market.

I think the significance of the term is the same to us today as it was to our ancestors, namely, that it is a practice which tends to disrupt or disintegrate the market, to disperse it, and thereby to prevent its functioning in the complete sense in which it should function if prices are to be determined by the free and unrestrained bargaining of all the participants in the market.

Q. Will you tell us what is meant by the term "dumping," if you recognize that term.

A. Yes.

Q. It is an economic term.

A. And a very old one.

The idea of dumping is very old.

5952 In modern literature dumping has been used very frequently in connection with operations with foreign trade, but it is also used in connection with domestic trading operations as well. It means simply this, that if you have some control of a local market situation, and can thereby maintain prices in that area, then you can dump outside of the area; that is, you could sell at a discount or at a price lower than the price maintained in the local market area, and thereby greatly extend the scope of the total area in which goods were distributed. But the important thing from the point of view of general economics is that this practice can exist only where you have control of the local situation and can maintain a price structure there that enables you to sell at much less at some distant market, and the larger returns in your local control market balance off, or in a sense recoup the lower returns in the distant market.

Q. Is the practice of dumping ever used in competitive markets?

A. No. In a true competitive market it is inconceivable that this practice should be used, or could be used. As I have indicated in some of my previous answers, a movement of goods out from a market would encounter the increasing cost of transportation, and the delivered cost to

the producer would increase as the distance increased. That is what would happen under a competitive market.

Now, under such a system as that a seller simply
5953 could not dump in some other area. He would soon go bankrupt if he did. You simply have to have control of the local situation before you can do it. That is just as true of domestic trade as foreign trade; the same principle.

Q. What is meant by "mutual dumping"?

A. Well, that is more of the same thing on a larger scale.

In order to have mutual dumping you would have to have at least two parties. There might be more than two, but at least there would have to be two in order to have such a situation. It would mean that, having at least two parties, each of those parties would have some control over the situation in his local market and could maintain prices there at a level higher than the competitive price, and then he could move goods out, or dump at competitive prices into the area of the second party; and the second party having the same situation could move goods into the market of the first party, that is, the market area where the first party has the advantage, I should say.

So you have the phenomenon there of two parties at least, each having some control of his local market area, and each making concession prices for goods sold outside of that area, dumping, so to speak, in each other's front yard.

Q. Could the practice of mutual dumping exist under competition?

5954 A. No. No. Under competitive economics such a thing would be impossible.

I might add there that it seems to me a case of mutual dumping is such an unnatural process, something so completely foreign to competitive economics, that it would almost necessitate some sort of understanding among the parties, because it is inconceivable that two parties, each having some monopoly control of his local market area, would dump into each other's territory. It is a process which almost would seem to require some mutual understanding in order to allow it to continue.

Q. Now, take the first situation of dumping about which you spoke. What effect would that type of dumping have

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upon the price in the—or level of prices in the home market, if you would care to add to what you have already said in that respect?

A. Yes. Well, I explained that, but I could state it a little more fully perhaps.

As I said a moment ago, the party who is engaged in this process must have some control over his local situation in order to keep the prices above the competitive level. In a sense your local market finances or pays the bill for the selling in the distant market at a concession price. It involves what we term discrimination that is,
the charging of a price higher than the competitive
5955 price to those in the local market in order to pave
the way for the charging of a lower price in the distant market, beyond the natural market area.

So I should say, as a direct answer to your question, that such a practice invariably necessitates the raising of the local price to a level that would be higher than the normal competitive level. I know of no exception to that general case.

Q. In that respect are conditions as to price any different when mutual dumping is involved?

A. No. No. You would have the same system there. Each of the parties in the case of mutual dumping would be under the same compulsion to keep his local price above the competitive level in order to pave the way for the dumped prices in the other fellow's territory. Otherwise it would seem to me that, if they could not do that, they very soon would go bankrupt. You can't just make a practice of giving away things without paying the economic consequences of it eventually.

That is what I had in mind in saying that in order to perpetuate such a thing which is so foreign to the whole concept of a competitive market that it almost necessitates some agreement, because if you did not have some mutual understanding or hands-off policy, it would seem to me that they would just have open warfare in a sort
of a knock down, drag down fight, and the outcome
5956 would be for each one to attempt to gain control of
his local market in order to store financial ammunition to carry on the fight.

Q. Well, as you understand the basing-point system of delivered price quotations, does it involve the use of a mutual dumping?

Mr. Stewart: Well, I object.

Mr. Robison: I object to it, Mr. Examiner.

Mr. Stewart: Let him define it.

Mr. Robison: Unless the witness has first defined what he understands to be the basing-point system.

Trial Examiner Norwood: Objection sustained. He will have to tell us what that understanding is before he bases his opinion on it.

By Mr. MacIntyre:

Q. Well, Professor, will you tell us what, if any, understanding you have as to what is a basing-point system of delivered price quotations?

A. Well, very briefly, as I understand the basing-point system it—you have a base price fixed at some point and then the quotations to buyers at the destinations are quoted as delivered prices; that is, the base price plus the freight to that particular destination. That, in very brief, is the essence of the system.

Q. Well, when such a system is—

Mr. Stewart: Well is that the definition of it?

5957 Trial Examiner Norwood: Is that your complete concept of a basing-point pricing system?

The Witness: No, sir. I was trying to, in a very brief statement there, give the main essence of the system. That, of course, is not a complete description of all the factors in the basing-point system.

Mr. Stewart: Well, that is what we—

Trial Examiner Norwood: Well, does it contain all the essential features?

The Witness: Yes, that is what I intended to say.

5959 By Mr. MacIntyre:

Q. Well, now, assume that a number of sellers with mills located at a place where the base price is instituted, as well as at other locations considerably removed, are using that method of quoting and are shipping pursuant to quotations made in that way, rigid steel conduit from near the points of production to near the points of production of other sellers or in the area where other sellers are producing. Would that present to you a condition of mutual dumping?

Mr. Stewart: I suggest that that is leading, and I object.

Trial Examiner Norwood: Read the question.

(Question read.)

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Trial Examiner Norwood: Objection overruled.
Answer the question.

A. Well, as I understand the question, you would have there a situation which might lend itself to—to this process of mutual dumping, as I have heretofore described it. The mill would have to—in order to go beyond this so-called natural territory in which it has freight advantage, would have to lower the mill net price, quoting a base plus the freight, but if it moved into someone else's territory where the other party had an advantage it would be reflected
5960 in a lower mill net.

Now, if you had all parties doing that, shipping into each other's so-called local advantage territory, you would have the situation which is described as mutual dumping.

Q. In your opinion, is it correct usage to say that this practice is resorted to in order to meet competition and is thereby a competitive practice?

A. Now, it would seem to me that those—those expressions involve a usage of the word "competition" which is not the generally accepted usage in economic discussions. Under that conception of competition any—say, the efforts of one made anywhere might be regarded as competitive, but it certainly is not in accordance with the ordinary usage of the term "competition."

5961 By Mr. MacIntyre:

Q. What is your understanding of the term "elastic demand"?

Mr. Stewart: "Elastic," did you say?

Mr. MacIntyre: Elastic demand.

A. A demand is said to be elastic when under a given set of conditions, a given price situation, a—a reduc-
5962 tion of the price in the market would call up a new demand or would result in an increase of the amount of goods taken from the market, while an increase in the price from the assumed starting point would curtail or restrict the demand; the demand would fall off. It is a term that describes this—this element of sensitivity of the demand to changes in price.

By Mr. MacIntyre:

Q. Would substitutibility of other products come into the picture as involved in the question of elastic demand?

Mr. Stewart: What was that word, "substitutibility"?

Trial Examiner Norwood: Read it.

(Question read.)

A. Yes, it might be involved. Under a given price situation if some substitute became available which was, for all practical purposes, equivalent to the goods under consideration, so that it could be substituted in practice for it, and that substitute came on the market at a price considerably less than the prevailing market price, buyers would naturally shift to the substitute and the price then of the—of the commodity under consideration would have to come down in order to keep that business; so that the substitutibility is an important factor in this element of elasticity. Where you have a considerable number of substitutes they may exercise a very significant influence on prices, and
5963 where you—where there are no substitutes at all or where available substitutes are so inadequate for the purpose in mind, that situation would tend to make for inelasticity of demand.

Q. What is meant by the term "inelastic demand"?

A. Well, I perhaps should have defined that in the next —previous question as an opposite situation from what we mean by "inelasticity." A demand is said to be inelastic when it doesn't respond to price changes; that is, when an increase in price from an assumed starting point would not result in a decline of the amount demanded. And, conversely, a reduction of the price below the starting point would not induce new demand. These terms are, of course, expressions of degree, degree of sensitivity in demand, and those degrees, of course, vary greatly from one situation to another.

Q. What do you understand by the term "law of one price," or "law of uniform price," as that term is used in economic theory?

A. Well, that refers to the tendency of a—of price in a competitive market to be uniform. Now, that means there would be one price at a given time, a price that is available to all buyers, and by the same token a price that all sellers must sell at, so that the reason for that is that the—obviously no seller, following his own self-interest, would sell for any less than that price and no buyer would be pre-
pared to pay any more than that because he doesn't
5964 have to. In other words, you have the equation of supply and demand there, so that the goods can be moved at that price and the sellers can sell their goods and

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the buyers can satisfy their needs at that price, so it must be uniform.

Q. According to economic theory, what forces would operate to create that tendency toward a uniform price?

A. Well, as I have already indicated in my previous answer the—the element of competition among the sellers and buyers, sellers competing to provide goods at a market, each one endeavoring to provide these goods at the lowest cost, the buyers coming there in an effort to satisfy their needs at the least outlay, and as a result of the interplay of these two forces a price is determined which, as I said before, will move the goods and which will enable demand to be satisfied.

Q. Does the term "law of uniform price" refer to price quotations by sellers to prospective buyers?

A. No, I should say not. See—in economic discussion we stick pretty closely to the idea of a price reflecting an actual exchange of goods and not some—some mere tentative offer to sell which is in the nature more or less of a feeler but may not be at all representative of what finally happens when an exchange is effected.

Q. Is there any economic principle which refers to a tendency for price quotations by a number of sellers to be identical at any given destination?

5965 A. No. Economic theory can't very well lay down any general law as to what sellers might—might want to do or think desirable to do. A seller would be free to make any kind of a price quotation he wanted to and—but, as I have indicated before, those price quotations are not—the real thing that economics deal with—you might have a great variety of quotations, using that term in the sense of offers or tentative proposals, but those would all be washed out in a competitive market and you come to a real decision, namely, a uniform price.

Q. Well, on the basis of your knowledge of economic theory, would you expect the law of uniform price, as you have used it—used that term—to operate if the term "price quotation" were substituted for the term "price"?

Mr. Stewart: I think the witness has already answered that question.

Trial Examiner Norwood: Answer it.

A. Well, that answer is "no." The two things are fundamentally different and you can't be substituting one for the other.

Mr. Stewart: He has already said that.

By Mr. MacIntyre:

Q. Well, if precise uniformity or identity of actual prices did exist in some market, would, then, you assume that perfect competition existed in that market?

5966 Mr. Stewart: Now, this is an economist, I take it, not undertaking to determine any final issue here as to competition. You are just asking him on an economic basis?

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Gilpatric: I object to that question. I think the question whether or not this witness assumes competition exists isn't a proper subject for an economic witness. That is a question for the Commission.

Trial Examiner Norwood: Just answer that question as an economist.

Objection overruled.

A. Answering the question, then, should say that an economist, observing a uniform price in a given market, would—would not want to jump to any immediate conclusion as to the facts regarding a state of competition. He would have to, as part of his job, analyze the underlying forces that have brought about that situation.

No, I should think he wouldn't be safe in pronouncing judgment just on the basis of a given price in a given market.

By Mr. MacIntyre:

Q. What other conditions could account for that precise uniformity in price?

Mr. Stewart: I am sorry, I didn't catch that.

5967 Mr. Robison: I object.

Mr. Stewart: Wait a minute. Let me hear the question, please.

Mr. Robison: All right.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Robison: I object, Mr. Examiner, on the ground that it is not a proper subject for expert opinion and calls for speculation without basis in fact in the question.

Trial Examiner Norwood: I don't think I can draw the line there and say that isn't an economic question.

Mr. Robison: I am not discussing whether it may be an economic question or not, but I don't conceive that

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just because one is considered an economist that justifies the acceptance of anything that may be considered to have reference to an economic question. My objection has reference to the recognized rules of evidence, not of economics, and I say that this question does not present a proper question for expert testimony and presents only one that calls for pure speculation without adequate basis in facts.

Trial Examiner Norwood: I think this goes to his theory of what a market is and what conditions would obtain in a market.

Objection overruled.

Mr. Robison: Exception.

5968 Mr. MacIntyre: Will you please read the question to the witness now?

Mr. Stewart: Would you mind reading the previous question so we get the continuity? As I understand it, what you are trying to do is to have him give you the factors which he said he would not be able to answer your former question without having.

Trial Examiner Norwood: Read the previous question and answer and this last question.

(Record read.)

Trial Examiner Norwood: All right. Answer.

Mr. MacIntyre: The word "could" is in there.

Mr. Stewart: Well, I was just trying to get it clear.

Trial Examiner Norwood: Answer the question.

A. Yes. Well, you might have an exact uniformity here of price in a given market. I am using the term "market" here in the way I defined it first, as a market place. And that might be due to the existence of a monopoly. There are certain situations in which a seller having a monopoly would fix a uniform price. If under the situation that was to his best interest and he had the monopoly power to do it, he could fix the price which would be the same to all. It would be a uniform price in that particular market, but it—

Trial Examiner Norwood: Now, Doctor, you just 5969 name those conditions first and then he will ask you for explanations of any particular ones of them in which he is interested. That is one condition, monopoly. Are there some more conditions there that you would expect, as an economist, to bring about uniformity of price or to explain the uniformity of price?

The Witness: Well, I think I have stated the two—the two contrasting situations, uniformity under competition, and uniformity brought about by monopolistic action.

Trial Examiner Norwood: We will have a five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Does the law of uniform price imply that no seller will ever try to expand his sales by offering to sell for a price below those of the other sellers?

A. No. In a competitive situation any seller is free to sell at a lower price if he can possibly do so, and that is one of the assumed elements of competition, that seller's will to make every effort to do so, and they will be under pressure to—that is, in competition with their competitors be under pressure to try to reduce their prices. No; the law of uniform price applies only to a given situation at a given time. Now, as conditions change there will be
5970 departures from that. Any seller might be quite free to reduce his price in order to get more business.

Q. Well, then, does the law of one price, of uniform price, imply that the price of the commodity in a given market will remain constant for any extended period of time?

A. No. No; it reflects a condition at the time and subject to very frequent change as conditions change.

Q. Does the term "competition" have any standard meaning in economic theory?

A. Well, yes, I think it does. Although it is a very general term and it covers a great multitude of situations, I think economists pretty generally agree that within these broad limits the term does mean that there is active rivalry among the sellers and among the buyers in a market that is described as a free market.

Q. Do economists recognize any degree of intensity of competition?

A. Oh, yes. There are varying degrees of intensity of competition, and economists do recognize these differences of degree.

Q. Well, does the word "competition" used without any qualification in economic literature, refer to the entire range of degrees of rivalry?

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A. Yes, I think it does. If you want to use it without any qualification and just as a broad term, it would
5971 include a great variety of situations, some in which there was intense competition, others in which there was somewhat limited competition.

Q. Well, does economic theory analyze in considerable detail this matter of competition?

A. Oh, yes. That is one of the—one of the major problems of modern economics, to analyze the factors that enter into market, to distinguish between competitive and monopolistic factors, and the interrelation of the two.

Q. In the analysis where is the emphasis put; that is, in analyzing competition?

Mr. Stewart: By whom?

Q. By an economist.

The Witness: State the question again, please.

Mr. MacIntyre: Read it in its entirety.

(Question read as follows:

"Q. In the analysis where is the emphasis put; that is, in analyzing competition, by an economist?")

A. Well, my understanding of the question there—

Mr. Austin: Will you raise your voice, please, Professor?

The Witness: Yes.

Mr. Austin: Thank you.

A. As I understand the question there, an economist would have to get at the factors that enter into the
5972 market, study the behavior of these various factors in an effort to determine whether—determine what was the relative degree of competition that prevailed.

The emphasis, I think, would be on trying to analyze the different elements that go to make up the total picture and coming to a decision as to the relative importance of the monopolistic practice as against the competitive practice.

By Mr. MacIntyre:

Q. Do economists focus their attention upon prices being quoted, charged, in analyzing competition and in the quality of it?

A. Yes. Yes. One would have to study the behavior of prices in given situations over a period of time in an effort to understand some of these forces that go to make up the total market situation.

Q. Well, does economic theory carry any implications as to what would be objective tests in determing what is a fair and reasonable price in a market?

A. Yes. I should say that—

Q. What are they?

A. —the standard test,—the question that the economist is confronted with is whether the forces operating in a market are operated freely and without restraint, without restriction, and if he finds that to be the
5973 fact in a given situation, he would then say that the price was fair or reasonable—not in the legal sense at all, but in the economic sense of having been arrived at by the free operations of buyers and sellers in a market.

Q. What kind of competition does economic theory assume will perform that function in the actual business world?

5974 The Witness: The kind of competition that economists have in mind is what we call free competition, as distinguished from some form that perhaps was restricted or unfree.

By Mr. MacIntyre:

Q. Are you acquainted with the term "effective competition"?

A. Yes. That term is sometimes used to indicate a sort of general degree of competitive activity. It means, I think, the competitive operations in the market are at least active enough or sufficiently active to exercise a major influence in the fixing of price. It is a very general term which can mean, I think, only a sort of practical effectiveness in the sense that it means there is enough of it there to exercise a major controlling influence on the determination of prices.

Q. Are you familiar with the terms "monopolistic competition" and "imperfect competition" as they are used in economic literature?

A. Yes. Yes, I am familiar with those terms.

Q. Will you tell us whether or not those terms are
5975 used synonymously in economic literature, or are they used to refer to quite different form of competition?

A. Well, there is great variation in the use of those terms. I should hesitate to say that there is any completely

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standardized meaning. Some writers use the terms interchangeably; others have a preference for one, and others have a preference for the second; that is, imperfect competition.

I am inclined to think that a great many people do use the two terms interchangeably. There is no unanimity of agreement on that point.

Q. Would you say that that is general in economic literature that they are used interchangeably?

A. I would say that it is quite a widespread practice.

Q. Will you say that one of the essential conditions for effective competition is that the buyer should have alternative choices as among sellers?

A. Yes, I should say that that is fundamental. That is basic to the whole conception of the competitive market, that the buyer should have such choice.

Q. Will you say that the alternatives as between sellers, —the choice of them on the part of a buyer, as you have used the term, is present if each time a buyer seeks quotations from a number of sellers of a homogeneous product he always meets the same quoted prices on the part of sellers regardless of their freight advantages?

5976 A. No. It would seem to me that the buyer in such a situation as you have described would be presented with a sort of united front on the part of the sellers. If the prices were identical, he would have no choice with respect to bargaining for a better price. That is simply a closed issue, and that freedom of choice would be entirely cut off.

Mr. Stewart: May I have the question? I think the question was as to quoted prices.

Trial Examiner Norwood: Read the question.

(Question read.)

By Mr. MacIntyre:

Q. Do you understand the question as read now?

A. Yes. I should not think it necessary to amend my answer.

Mr. Austin: I am sorry, I can't hear you.

Trial Examiner Norwood: A little louder, please.

The Witness: If the buyer were confronted with uniform and identical price quotations from all sellers, and he could not get back behind those quotations to the real market, why, the situation is the same then as I have indicated.

By Mr. MacIntyre:

Q. What does the term "price quotation" mean to you as an economist?

A. I should say, very briefly, it means a form of competition that expresses itself in a freely determined com-
5977 petitive market price.

Q. Does it necessarily mean all forms of competition existing as between sellers?

A. No. The emphasis there is on the price element as the major factor.

Q. Would you consider the making of different offers as to the quality of product in terms of sale and delivery, the price being precisely the same from all sellers, was the same thing as price competition?

A. No. No. Those activities that you described might be described, let us say, by quality—"service competition" is sometimes used—but it is not price competition, because under your assumption that price is the same; no competition with respect to price but only with respect to these other matters.

Q. What would you say is the relation between price competition and effective competition, as you have been using those terms?

A. Well, I should say they come to the same thing. If you are using my conception of effective competition as a sufficient amount of competitive activity to determine a price, it would seem to me that if you had effective competition you could say that it was price competition.

Mr. MacIntyre: Would you read the answer, please?

(Answer read.)

By Mr. MacIntyre:

5978 Q. If you do not have effective competition with respect to price, would you say that you would still have price competition?

A. No.

Mr. Stewart: Now, that is objected to, as the question answers itself. If you do not have price competition, do you have price competition? The answer is "no," of course.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: With that concession on the part of counsel, I move on to another line.

(Discussion off the record.)

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Trial Examiner Norwood: We will take a five-minute recess.

(There was a short recess taken.)

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Dr. Gray, I am going to ask you a number of questions which will be based upon a hypothesis, which I will designate as hypothesis No. 1, and I hand you a statement of that hypothesis and ask you if you are acquainted with it and if you have read it.

A. Yes, I have read it.

Mr. MacIntyre: I ask that that be included in the record, if Your Honor please, as Hypothesis No. 1.

5979 Trial Examiner Norwood: The hypothesis is as follows:

Hypothesis Number 1.

I ask you to consider that the following is a statement of practices, conditions and circumstances prevalent in the rigid steel conduit manufacturing industry up to January 25, 1941.

Assume that rigid steel conduit is used as raceways in electrical installations.

Assume that the principal raw material from which it is manufactured is steel pipe.

Assume that some operating and producing mills are located in or near Pittsburgh, Pennsylvania, and that other operating and producing mills, some of which have large producing capacities, are located at Conshohocken, Pennsylvania (near Philadelphia), Struthers, Ohio (in the vicinity of Youngstown, Ohio), Butler, Pennsylvania, Cohoes, New York (near Albany), St. Louis, Missouri, and at Indiana Harbor, Indiana (between Gary and Chicago).

Assume that manufacturers of rigid steel conduit which produce and market in any given territory desire to make more sales involving more tonnage than they have secured and that the demand for rigid steel conduit in the United States at prevailing prices is less than the capacity of

5980 the plants to produce.

Assume that it is the general practice of rigid steel conduit manufacturers to publish and distribute to their prospective customers price quotation sheets which are commonly known in the industry as "price cards," and

which contain quotations of what are designated therein as Pittsburgh, Pennsylvania, and Chicago, Illinois, base prices to be used as factors in arriving at delivered price quotations.

Assume that the rigid steel conduit manufacturers specify in their price quotations that prospective purchasers in determining delivered price quotations f.o.b. cars at their respective destinations must do so by adding to the Chicago base price or Pittsburgh base price quotations, whichever of those two basing points is said by the manufacturers to be the nearer freightwise to the buyer's location, another price factor designated by the manufacturers as "delivery charges," and which is reputed by them to be a rail freight rate to the destination from the applicable basing point, and that the delivered price quotations which it is said must thus be determined and used no matter where the shipments of rigid steel conduit originate are arrived at through the use of a delivery charge factor adjusted and translated by the manufacturers from terms of cents per hundred pounds into terms of cents per hundred feet and

that when they are so translated and adjusted they
5981 do not represent actual or exact transportation costs

from either Pittsburgh or Chicago to the destinations involved.

Assume that according to the formula thus used the delivered price quotations which apply throughout the greater part of the continental United States and for export are those calculated from the use of the Pittsburgh, Pennsylvania, base price, the exceptions being certain locations and areas contiguous to Chicago covering portions of the States of Illinois, Missouri, Iowa, Wisconsin and Michigan and certain other separated and scattered areas or locations in Texas, New Mexico, Colorado, Wyoming, and Utah at which the delivered price quotations are calculated from the use of the Chicago base price.

Assume that delivered price quotations thus made by rigid steel conduit manufacturers are matched and made the same by all such sellers of rigid steel conduit at any of the destinations where they make price quotations on rigid steel conduit.

Assume that the "price cards" of the rigid steel conduit manufacturers have not carried quotations on the basis of f.o.b. mill at the point of production separately from and independently of the use of the basing point formula of determining delivered price quotations.

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Assume that up to and including January 25, 1941, the date of the issuance of the complaint in this case,
5982 numerous sales were made by rigid steel conduit manufacturers at amounts which were calculated and determined through the use of the so-called basing point prices in accordance with the formula and procedure as specified, described and provided for in the aforesaid "price cards."

Assume further that when sales were thus made by the rigid steel conduit manufacturers and shipments as a result thereof made to customers located in the Chicago basing territory and the Pittsburgh basing territory each such manufacturer received from its respective customers amounts of money in the form of mill nets which systematically varied in accordance with the basing point formula of price quoting with higher mill nets being received from its nearby customers than from its more distant customers.

Assume that the amounts in the form of mill nets received by each such manufacturer whose mills are located at Conshohocken, Pennsylvania, Cohoes, New York, St. Louis, Missouri, Struthers, Ohio, and Butler, Pennsylvania, systematically varied between its respective customers, with higher mill nets being received from its nearby customers that from its more distant customers, irrespective of whether such shipments were made within or into either the Pittsburgh or the Chicago basing territories, and that the higher mill nets thus involved reflected in part a calculation and addition to the applicable base price certain phan-
5983 tom or fictitious freight factors not incurred as costs by anyone.

Assume also that substantial shipments are being made by rigid steel conduit manufacturers whose mills are located in and around the Pittsburgh basing point into the territory where delivered price quotations are controlled by the Chicago basing point.

Assume that so-called Chicago base price is substantially higher than the so-called Pittsburgh base price, but not by an amount which is equal to the rail freight from Pittsburgh to Chicago.

Assume also that substantial shipments are being made by rigid steel conduit manufacturers whose mills are located in and near Pittsburgh into the freight advantage territory of the rigid steel conduit manufacturers whose mills are located at Conshohocken, Pennsylvania (near Philadelphia), Chohoes, New York (near Albany), Struth-

ers, Ohio (near Youngstown), Moundsville, West Virginia (near Wheeling), and Butler, Pennsylvania, and that the manufacturers with mills at those places are also making substantial shipments to locations in the freight advantage territory of Pittsburgh with some shipments being made by some manufacturers into Pittsburgh.

Mr. Stewart: Now, are we entitled to object?

Trial Examiner Norwood: Wait until he has asked
5984 his question. Let him finish his question.

By Mr. MacIntyre:

Q. Dr. Gray, taking all of the things together as stated in that hypothesis No. 1, do you as an economist recognize the method set forth therein as a method of quotation and sale and a resulting geographical pattern or system of prices in effect in any American industry or industries?

5990 By Mr. MacIntyre:

Q. Professor Gray, referring again to hypothesis No. 1, have you noted in economic literature—no; strike that.

Are the conditions outlined in this hypothesis consistent with the existence of any form of competition with which economic literature deals?

Mr. Robison: I object to it, Mr. Examiner. I think the question might properly be asked of the witness whether it is consistent with any form of competition with which he is familiar, but I don't think they can bring in the expressed views of other economists, in their writings
5991 or otherwise, without producing the other economists.

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. It is not consistent with the true meaning of competition as I find it outlined in economic literature.

By Mr. MacIntyre:

Q. Is it consistent with any condition which is outlined in economic literature?

A. It might be said to be consistent with what some economists term "monopolistic competition," but it certainly does not conform to the customary meaning of "competition" as used by economists. I know of no economist who in his formal scientific writings which were distributed among his fellow critics, would describe such a system as

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competitive. On the contrary, in the literature, that is, in the formal scientific literature, you will find such systems being described as monopolistic, or by other writers as a form of monopolistic competition.

Q. Could price competition exist under the conditions outlined in that hypothesis No. 1?

A. I don't see how they could if we mean by "competition" what I have already indicated; that is, competition in the free market where buyers and sellers meet freely, prices are determined by competitive bargaining.

Q. Where is the market, if there is any, under
5992 those conditions?

A. Well, it seems to me that a system as herein described would in effect destroy the market. It would disperse the forces that go to make up a market, and in that sense, then, would destroy the effectiveness of the operation of the market.

Q. What, then, do you say as to whether or not effective competition could exist under the conditions outlined in hypothesis No. 1?

A. Referring back to my previous discussion of effective competition, I should say that a system of pricing as set out here would not constitute effective competition.

Q. And for the failure to provide alternatives about which you told us this morning; is that what you are referring to?

A. It seems to me in such a system as herein described the buyer would not have that freedom of choice or that freedom to select the various alternatives which are necessary to—for the constitution of a competitive market. He would not be in contact with his fellow buyers; he would not be in a position to interchange information with them such as is commonly done in an open market. He would be cut off from opportunity to—to bargain with the sellers in order to secure the lowest possible price; he would be cut off from opportunity to select his own mode of transportation and arrange for the best transport conditions
5993 possible. Those alternatives, it seems to me, would not be available to the buyer under such a system.

Q. And what alternatives would he possess if the transportation were not tied to the product in the quotations?

A. Well, he can select his own mode of transportation and make the best arrangements he could for the transportation of the goods from the point of production to his own destination.

Q. And what do you say as to whether or not the absence of these alternatives affect price competition?

A. Well, as I indicated in my previous testimony, the buyers must have alternatives if they are to be effective in a competitive market, and under the circumstances herein described those alternatives would be cut off. Hence it would seem to me that you would not have one of the essential factors in a competitive market.

Q. What is your testimony as to whether or not the absence of these alternatives would constitute a substantial interference with effective competition among producers?

A. I should think it would amount to a very substantial restriction upon free competition.

Q. Now, referring to the basing-point method of price competition outlined in hypothesis No. 1, do you understand that method as outlined therein to involve mutual dumping?

A. Yes, I think it does.

Q. That is, as you have used the term this morn-
5994 ing in your testimony?

A. Yes. A seller would—by using this method described here would be able to ship out beyond his natural territory; that is, the territory in which he has a local freight advantage, over into other territory by making a concession in his mill base price, and since others could do the same you would have that element of mutuality in the dumping process.

Q. Assume that while the basing-point practice was in force in the rigid steel conduit industry, in accordance with the assumptions outlined in hypothesis No. 1, the demand at Philadelphia for conduit decreased and the demand at Washington increased while quotations and prices remained unchanged. What is your opinion, as an economist, of any claim that each of those two destinations is a separate market?

A. Well, on the statement of facts as presented, the action of the prices in remaining constant despite these changes in the supply and demand situation at Philadelphia and Washington would seem to indicate that those two cities are not separate markets because the supply and demand factors in those particular cities seem not to have controlled the price.

Q. On the same assumptions, what is your opinion as an economist of any claim that the quotations and prices under the basing-point practice are determined independently

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at each destination by the forces of demand and supply focusing at each such destination; that is, at each so-called market?

5995 A. If that were true in the case as stated, it would seem to me that the price at Philadelphia should have declined because there was this decline in the demand. On the contrary, the price in Washington should have risen because of the sudden increase in the demand at that point. But as the statement has it, there was no change in the price. Well, it seems to me that those two cities are not separate markets because the price machinery there is not responsive to the changing supply and demand situations in those two cities.

Q. On the same assumption, what is your opinion as an economist of the consistency of the mentioned claim within a further claim that the only way the various local demands and the changes in them affect quotations and prices is that all these demands in the Pittsburgh area are thrown into a hopper in order to determine a base price at Pittsburgh?

A. Well, it seems to me that in that connection that the —whatever was thrown into the hopper at Pittsburgh does not seem to have affected the situation in either Philadelphia or in Washington. There was no price change to reflect these quite different situations in the two cities. It seems to me inconsistent to say that they are separate markets and then to turn it around and say that the price is determined somewhere else.

Q. On the same assumptions, what is your opinion as an economist as to the way the various local demands

5996 are related?

A. Well, under this basing-point system as described here it would seem that there was no relation between the situation in Philadelphia and the situation in Washington.

The answer would be, of course, quite different if you had a free competitive situation. Then the same thing would happen as I indicated in my testimony this morning. If the two markets are out of line, there would be an equalization between them. There appears not to have been such an equalization.

Q. That is, under the basing-point method outlined in hypothesis No. 1?

A. Yes.

Q. Are the various destination prices related to each

other in any other way than through the basing-point formula under the hypothesis No. 1?

A. No, I can't see that there is any relation between the two prices.

Q. I refer again to the conditions outlined in hypothesis No. 1, and assume further that the base prices are higher than the average of the mill nets received by the producers who are selling under that system, that being so because the base price is the maximum mill net and freight absorption through sales from one basing-point territory into another reduces the mill net in some instances below
5997 the maximum mill net.

Now, on the basis of those assumptions, what do you, as an economist, say as to the significance of the level of the base price involved?

A. It would seem to me that under the assumed conditions we have the same situation that very commonly occurs in all discriminatory price systems, where you have higher prices for some buyers or for some locations than for others, so that your highest price is always considerably in excess of your average, which here is the average mill net, and there being other prices then that are very much below the average, so you get under such a system a tilting of the price structure.

Now, in the assumed situation here the base would necessarily have to be at some level higher than the normal competitive level; otherwise the smaller mill nets on these distant shipments could not have been recouped from the higher mill nets in the nearby territory. It would seem to me the overall effect is that your base would have to be higher, because the local buyers, that is, those near the point of production, pay the base price plus the freight.

Now, if that is to be high enough to recoup the much less returns on distant shipments, it must be higher than would otherwise be the case.

Q. When you say "than otherwise would be the case," what are you referring to there?

5998 A. I am referring to a competitive situation, in which case those people, or those buyers nearest the point of production would have the advantage of their nearness of location to the center of production.

Q. Now, earlier you have spoken of these alternatives that are open to buyers. Do you place any significance upon the number of sellers who are quoting prices to prospective buyers when you refer to alternatives?

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A. Well, in a competitive situation, of course, the more sellers you have the more choices buyers have and the more active competition you are likely to have; but in the basing-point system as here described it would not make any difference how many sellers you had so long as those sellers quoted the same identical delivered prices. The buyer would have no choice as among sellers because they all quote the same. So from the buyer point of view the number of sellers is not a significant matter.

Q. Is it, then, your testimony that the more sellers there are to quote prices there are no more alternatives for the buyer and open to him if they quote the same price?

A. Yes, this is correct. If they are all quoting the same delivered prices, then from the buyer's point of view it makes no difference whether there is one seller or a thousand. It is the same price to him.

Q. Are you familiar with the term "rigidity of price"?

5999 A. Yes. That is a very common term used by economists.

Q. To what does it refer?

A. Rigid prices are prices which do not respond to changing economic conditions measured over some period of time.

Q. Is it customary to use the term "flexible price" as the opposite of "rigid price"?

A. Yes. That term is used very frequently to mean just the opposite of rigid prices, flexible price being defined as one that moves frequently and readily in response to changing economic conditions.

Q. Would you expect an industry featured by effective competition to possess rigidity or flexibility of prices?

A. Effective competition tends to make for flexibility in prices, because any time you have some fundamental change in the supply and demand situation competition makes that change immediately effective in the market and it shows up in a price change, so that flexibility of prices is characteristic of a competitive system.

Q. Do prices have to be flexible in order to keep things closely related to costs of production?

Mr. Gilpatric: I object to that question as leading.

Trial Examiner Norwood: Let him answer.

I ask the counsel to avoid leading just as much as possible.

6000 A. Yes. In a dynamic society, where you are having a constant process of change taking place, it follows that costs of production will likewise change. And if the price system is to record those changes in cost of production, you need a flexible price system.

By Mr. MacIntyre:

Q. I will ask you to assume that it appears in evidence in this case that at a certain time there occurred a decrease in the total demand for conduit at the delivered price quotations; that it was then followed by all manufacturers of rigid steel conduit throughout the country, so that there was a considerable increase in the idle or unused capacity for production, but that nevertheless the base price factor in the quotations was at that time substantially increased, thereby increasing the destination cost of the product in all parts of the country.

Would this behavior of prices indicate to you as an economist that the price of rigid steel conduit was acted upon or responsive to the forces of demand and supply as you would expect it to behave in a normal or approximately normal competitive market?

A. No. On the basis of the facts as recited I should say that the price system there acted in just the opposite way from what one would expect that it would operate in a competitive system.

6001 If the demand declines under a state of competition, sellers are put under pressure to reduce their prices; otherwise, they can't sell their product.

Now, in this case, according to the statement, demand fell off but the price, instead of being reduced, as one would normally suppose, was actually increased. I should say that is just the opposite of the type of price behavior one would expect in a competitive situation.

Q. Does economic theory devote any considerable attention to the relationship between prices and the costs of production?

A. Yes, it gives a very considerable amount of attention to that problem.

Q. Could you summarize for us this relationship as economic theory pictures it?

A. The general theory holds that over a period of time the price tends to conform to the cost of production. If it goes much above cost, you get increased production, which brings the prices back down; if it goes below, you

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get declined production, which would bring the price back up. So that in the long run, as we say, the price must equal the cost of production, but under effective competition it could not for any length of time be maintained at a level above the cost of production.

Q. Well, does that mean that a commodity sold
6002 under conditions of effective competition will sell at its cost of production over any length of time,—that is, precisely at its cost of production?

A. No, it does not mean precisely at its cost of production to any given point of time.

This statement I have just made reflects a general tendency that in the long run and over any measured period of time you do find that costs influence prices; or, putting it the other way around, that prices do tend to follow the cost of production.

Q. Well, using that term "costs of production," as you have been using it, what do you mean by it? What does it include?

A. Well, I should include in costs those things we are all familiar with, such as necessary outlays for labor, materials, return on the necessary amount of capital employed in the operations of the business, together with such items as taxes and other depreciation items.

Q. Would it include transportation costs?

A. Yes. Transportation costs in the assemblage of the necessary material that would go into the product would be reflected in the costs of manufacturing.

Q. Well, would you include in the cost of producing a manufactured product the cost of transporting the fabricated product from the mill or factory where the last step in its fabrication takes place to the location of the
6003 buyer or the place where he desires to use it?

A. No, I couldn't see that that had anything to do with the cost of producing the article in question.

Q. Why not?

A. Well, it is a cost of distributing the product, of transporting it from the place where it is produced to the place where it is to be used. It is certainly not a cost of production.

Q. Will you define "price" as you have been using that term?

A. Well, I think in my previous testimony I defined

"price" as the ratio of exchange of goods as determined in a freely competitive market.

Q. Well, what does the term "price" mean as something of value, or exchange for value, or what is it in the economic sense, as you know it, giving a simple definition of it?

Mr. Gilpatric: May I have the question?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Gilpatric: I object to that as duplication. He has already testified as to the definition of "price."

Trial Examiner Norwood: Objection overruled.

A. Well, I think, if I understand the question, it refers to the same matter I spoke about before, that price is the ratio of exchange, expressed in dollars as our stand-
6004 ard of measurement, as determined in a competitive market, where the forces of supply and demand operate.

By Mr. MacIntyre:

Q. Is the freight for the shipping of steel pipe from the steel works to the conduit factory a part of the cost of producing conduit in the economic sense?

A. Yes. The manufacturer of conduit would have to pay the freight on the raw material which went into the manufacture of his product.

Q. Well, is the freight for the shipping of the conduit from the point of production to the point of use a part of the cost of producing the conduit?

Mr. Gilpatric: I object to that.

Trial Examiner Norwood: I think he may explain that further, if he can.

Objection overruled.

A. Well, the transportation cost from the point of production to the point of use is not a cost of production; it is a cost that is necessary to be incurred in order to move the product. It is not an activity over which the manufacturer himself has control, for which he is responsible. It lies outside of his scope of operations.

Trial Examiner Norwood: You would call that cost of delivery as distinguished from cost of production, wouldn't you?

6005 The Witness: Yes.

6006 By Mr. MacIntyre:

Q. Dr. Gray, is it a part of economic opinion that the transportation of a product such as rigid steel conduit from the factory where it is finished to a buyer at some other location by a common carrier not owned by the seller of the conduit is a part of service rendered, that is, economic service, rendered by the producer of the conduit?

Mr. Robison: I object, Mr. Examiner, because the question is whether it is a part of economic opinion. I don't question that this witness is qualified to express his opinion on certain economic questions, but I don't think

6007 that he or any other witness is qualified to give the opinion of others than himself.

Trial Examiner Norwood: Objection overruled.

Mr. Robison: Exception.

Trial Examiner Norwood: Tell us about that.

A. The answer to the question, as I stated, is "no." This function of transportation is performed by the common carriers; the function of production is performed by the manufacturers. You have two different functions, two different organizations, each performing its own function.

By Mr. MacIntyre:

Q. Well, under those assumptions is the conduit manufacturer entitled by any economic principle of which you have any knowledge to make any profit on the transportation service thus performed by a common carrier?

Mr. Robison: I object to it as incompetent, irrelevant, and not subject to proper—not a proper subject of opinion evidence.

Trial Examiner Norwood: Sustained.

Mr. MacIntyre: If Your Honor please—

Trial Examiner Norwood: Read the question. I will hear from you.

Read the question.

Mr. MacIntyre: I would like to ask that the question be read.

6008 (Question read.)

Mr. MacIntyre: I submit that—

Trial Examiner Norwood: I beg the counsel's pardon. I will overrule the objection.

Mr. Robison: I wish to press my objection, Mr. Examiner.

Trial Examiner Norwood: Yes.

Mr. Robison: I made it in all earnestness, and I still press it.

Mr. MacIntyre: The evidence of record here is to the effect that these people are making a profit off of transportation service. Now, I want to know whether any economic principles support them in doing so.

Trial Examiner Norwood: I want to ask the Doctor a question, whether economic theory deals with that in any way whatsoever?

The Witness: Well, as I have tried to indicate, economic theory goes very extensively into the question of cost of production and cost of distribution, cost of transportation, distinguished.

Trial Examiner Norwood: Can you answer that with reference to economic theory? Can you?

The Witness: Yes, I think I can.

Trial Examiner Norwood: All right. Objection overruled.

6009 Answer the question.

Mr. MacIntyre: May we have the question read if the Doctor doesn't recall it clearly.

Trial Examiner Norwood: Read it.

(Question read.)

A. Well, I think the answer is "no." In keeping with the general teachings of economics, as I understand them, a man makes a profit by the performance of certain definite functions. That is his reward for his service to society. Now, a man under that conception ought not to be entitled to a profit on some service which he didn't—didn't render. The distinction, I think, is in the functions here, the function of production as against the functions of distributing products.

Trial Examiner Norwood: Suppose he sells it at the point of delivery and pays the common carrier for the transportation charges. Would that be part of a manufacturer's cost then?

The Witness: No. No. I think the cost of manufacture is the cost at the plant where the manufacture takes place.

Mr. Gilpatric: Mr. Examiner, I move that the preceding question and answer be stricken, as the witness' answer has clearly shown that he is dealing with some kind of moral concept and moral law, as to who is entitled to what kind of rewards for performing services, and it is way
6010 beyond the scope of economic judgments this witness is qualified to give.

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When we were examining our witnesses, when our questions even verged in that direction the objections to the questions were sustained. We are not dealing here with moral laws, who is entitled to rewards.

Trial Examiner Norwood: I took that view momentarily, but after hearing the question read I was convinced that it did not go to the moral aspects of the case—that is, legal aspects of the case, but what the manufacturer would be deemed under economic theory to be entitled to.

Mr. Gilpatric: Well, the question might have been susceptible to that kind of an answer, but the answer given—

Trial Examiner Norwood: Well, I assure you that that is the only way it is going to be considered. I shall deny the motion.

By Mr. MacIntyre:

Q. Well, under the assumptions that I have just stated to you concerning the sale—that is, the production and sale and transportation of rigid steel conduit, is the freight charged to any destination any part of the price of conduit?

Mr. Stewart: You mean as an economic theory?

Mr. MacIntyre: Yes; all of this goes to economic theory and economic principle, of course.

Mr. Stewart: Why don't you put that in?

6011 Mr. MacIntyre: This man is not on that score testifying as any factual witness.

Trial Examiner Norwood: Do you want the question read?

The Witness: Read the question.

Trial Examiner Norwood: Read the question.

(Question read.)

A. I should think not. In line with my discussion this morning of the nature of markets and prices, I indicated there that the price was for a single commodity or good which was the object of the transaction, and under the assumptions stated here you would have two items, two distinct items, a cost of production item of conduit plus a freight item. Price refers to a single commodity as used in ordinary discussions of competitive economics.

Trial Examiner Norwood: Well, in that sense do you consider price in its technical sense as understood by economists to be any different from what is ordinarily understood as price?

The Witness: I am using the term here in the technical sense as used by economists and not in any popular sense, but in the strictly scientific usage of the term.

By Mr. MacIntyre:

Q. Then, what, in your opinion, is the price of conduit, under those assumptions, in the economic sense?

6012 A. Well, I should think it would be—it would be the price as determined at the point of production under competitive conditions. If that were the case you could say that you had there a competitive price.

Q. If two commodities or two services or a commodity and a service were combined, would the amount of money for which such a combination exchanged be called a price in the economic meaning of that term?

Mr. Stewart: You say "would it be"? Let me get the question.

Trial Examiner Norwood: Read it.

Mr. MacIntyre: Yes.

(Question read.)

Mr. Stewart: You mean "is exchanged," don't you?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Answer the question.

A. That would not be a price in the economic sense as ordinarily used among economists. It might be—sometimes is referred to as a combination price, but that is not in accordance with the common usage among economists.

Trial Examiner Norwood: How about delivered price? Would delivered price describe it?

The Witness: Well, I—yes, delivered price would indicate what has happened there, that the cost at the

6013 point of delivery would be the base plus the freight.

Trial Examiner Norwood: That would mean to you price plus a good; would it?

The Witness: No, that isn't—

Trial Examiner Norwood: Plus an added value?

The Witness: You mean the delivered cost?

Trial Examiner Norwood: Yes.

The Witness: Well, somewhere in there, of course. You would have the fundamental question of what is the price of conduit or any other commodity, and you would have also the question of what is the lowest cost of transportation. Now, in competitive analysis you would put the two together, the necessary cost of production plus the lowest cost of transportation, to give you the—the cost to the buyer at destination.

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By Mr. MacIntyre:

Q. If in the case of a commodity such as rigid steel conduit a price quotation contained a charge for transportation of that product from the fabricator or from a base point to the buyer, would you as an economist consider that to be a quotation of the price of the conduit in the economic sense of the term "price"?

A. I think I have already answered that by my saying that this figure that is quoted there is a combination of elements. It is not a statement of the price of conduit in
6014 the economic sense.

Q. If it were said to you that the price of steel conduit purchased from a certain manufacturer was so much per hundred feet, would you as an economist assume that this price did or did not include the shipping cost from that manufacturer to the location of the buyer?

Mr. Stewart: I think, if Your Honor please, that we have had that answered about seven different ways, seven different times, and why ask him that? I object on the ground it is repetitious.

Trial Examiner Norwood: I think he has approached it from every conceivable angle.

Mr. Stewart: I think he has, too. He has told you what he regards as price and—

Trial Examiner Norwood: He is asking here in a more illustrative way.

Mr. MacIntyre: Within the past week I have gone over the record of February 10th, February 11th, February 12th, February 13th, 1942, and I do not believe that it has been possible for me to approach any one of these problems that I have approached today from as many angles as the Respondents approached each of their problems.

Mr. Stewart: Well, I wasn't here, so I—

Trial Examiner Norwood: Well, that isn't what we have to decide here now.

6015 Mr. Stewart: No; two wrongs don't make one right.

Trial Examiner Norwood: I think it has been covered, but out of an abundance of precaution I will permit that answer.

Overrule the objection.

Answer.

The Witness: Would you read the question again, please.

(Question read.)

A. Well, as an economist, taking that statement as it stands, I would assume that that is the price of conduit at the mill.

By Mr. MacIntyre:

Q. When an economist uses the term "price" does he ever mean a mere price quotation by a seller or an offering price by a buyer?

Mr. Stewart: Now, I object to that, first, on the ground it is repetitious, and, second, that the witness, I take it, is not entitled to answer for all the economists. He says, "when an economist."

Trial Examiner Norwood: Well, I think this goes to a different angle.

Mr. Stewart: No, but the question is, "When an economist uses the term, what does he mean?" Now, how could the witness answer the question?

6016 Trial Examiner Norwood: We understand that. When he, as an economist, uses it, you can find out that.

Objection overruled.

Mr. MacIntyre: Please read the question.

(Question read.)

Trial Examiner Norwood: Now, answer that with respect to yourself as an economist.

A. I shall.

As an economist, I should draw a distinction between "price" and "quotation."

Mr. Stewart: "Price" and what?

The Witness: "Price" and "quotation."

Trial Examiner Norwood: Yes.

The Witness: The price is an actual consummated transaction, whereas a quotation is a mere offer.

By Mr. MacIntyre:

Q. Do you know of any other way that the terms have been used; that is, by economists?

A. You mean the term "price"?

Q. And "quotation." Do you know of them having been used to mean anything other than what you have told us that they mean to you as an economist?

A. Oh, it is used in various ways, but usually an economist will use some qualifying word to indicate what he means.

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Q. Well, when economic literature uses the term
6017 "price" as you know economic literature, do you know it to include quotations?

A. No. No, that is not the—that is not the usual usage of the term. As I say, we draw a distinction between a price and a quotation, an offer.

Q. When the economist analyzes the operation of supply and demand forces as determinative of price, does he always deal in prices which are assumed to result from actual sales transactions?

A. Yes. Yes.

Q. Can a price in the economic sense of the term exist under conditions of complete or almost complete monopoly?

A. No, not in the—not in the competitive sense that I have been using it here. Where such a situation existed one should use, as economists ordinarily do use, "monopoly price."

Q. Now, with reference to the conditions outlined in hypothesis No. 1, in your opinion, is the basing-point system described there one that might fairly be called a natural method of competition?

Mr. Gilpatric: Now, I object to the question on the ground that we are getting into fairness again, and these questions of moral judgment, I don't think, are proper subjects for the examination.

Mr. MacIntyre: All right. I will insert the word "properly" instead of "fairly" in that question.

6018 Trial Examiner Norwood: Objection overruled.

A. Well, I object to using the word "natural" in this connection.

Mr. Stewart: I was going to raise that.

A. That is a word that is subject to great abuse, and it is rather suspect among modern students of economics—

Mr. Stewart: Then I will help the witness by objecting to the question on the ground that it should be rephrased with the elimination of the word "natural."

Trial Examiner Norwood: I think he can go ahead and make such answer as he desires.

Objection overruled.

Have you finished your answer?

The Witness: No.

Mr. Stewart: I would like to have the question, if it is going to eliminate "natural."

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: No; the word "natural" is not eliminated there.

Mr. Stewart: Well, the witness objects to the use of the word "natural."

Trial Examiner Norwood: Read the question.

(Last question and answer read.)

A. I wasn't quite through.

By Mr. MacIntyre:

6019 Q. Well, will you proceed with anything further in your answer that you care to make?

A. I want to add that it seems to me that a system as described here could not have arisen out of the operation of a—purely a competitive economic system. You have here, it seems to me, as I examine the hypothetical statement, a number of artificial elements, elements that have been perfected by human arrangements, and it is not correct usage to describe such arrangements as growing out of natural causes. I should describe it as an artificial arrangement to distinguish from some natural arrangement that has arisen out of the mystic processes of economic evolution or something of that kind.

Mr. Robison: Now, Mr. Examiner, I move to strike in the witness' answer that part in which he said that in the situation presented in the hypothetical question you have a situation which has resulted from human arrangements. Now, that is pure speculation and conclusion on his part which is not the function in a matter of this sort of an expert witness. It is the very sort of thing that an expert cannot properly be allowed to express as a conclusion.

Mr. Stewart: Let me add to this—

Trial Examiner Norwood: Do you want me to strike all the testimony which has been produced here to the effect that similar situations could have resulted naturally from the operation of economic law?

6020 Mr. Robison: Not at all. I move to strike that part of the witness' testimony where he isn't expressing an opinion. He says, "You have here something which was produced by human activities." Those may not be the exact words, but they are in substance his words. Now, I move to strike his answer from that point to the end, and all of it was subject to the same objection.

Mr. Stewart: May I add to the objection this: That there is nothing in the hypothetical question which would enable the witness to pass any opinion at all on how the

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basing-point system developed in the rigid steel conduit industry. You can search it from beginning to end, you won't find a word there as to that.

Mr. Bozeman: I would like to add, Your Honor, if my recollection serves me correctly, that while our experts were on the stand Your Honor sustained objections repeatedly to questions calling for that kind of an answer.

Trial Examiner Norwood: I remember asking one similar myself and no one objected.

Mr. Robison: That was your privilege.

Mr. Austin: We were scared.

Trial Examiner Norwood: Objection overruled. Answer the question.

Mr. Robison: Well, it was a motion to strike.

Trial Examiner Norwood: Well, motion denied.

6021 Mr. Robison: I understand we have got exceptions to all these rulings without noting them, Mr. Examiner.

Trial Examiner Norwood: Certainly.

Had you finished your answer?

The Witness: Yes.

6022 By Mr. MacIntyre:

Q. Are there any ways in which the basing-point system, as outlined in hypothesis No. 1, is, in your opinion, unnatural or artificial by reason of the geographical pattern of prices it creates?

Mr. Stewart: I object to that. In the first place, it is leading. In the second place, I know of nothing in the hypothetical question which forms a basis for that question.

Trial Examiner Norwood: Objection overruled.

A. The geographic pattern of prices growing out of the operations of the system as described does not conform to the geographic pattern of prices which I explained earlier under a so-called competitive economy. Under the system as described, sellers can sell far beyond the area of their own immediate local advantage to the distant points which are nearer to other mills, and as I pointed out earlier, that is unnatural in the sense that it could not result from the operations of a competitive market economy.

By Mr. MacIntyre:

Q. In your opinion, is it or is it not natural for producers to compete or to profess to compete by mutually

matching each other's delivered price quotations with identical quotations derived by formula from the elements of an assumed common base price and assumed common cost of transportation?

Mr. Stewart: I object to that question on the
6023 grounds it is irrelevant and immaterial as to whether it is natural or unnatural. That isn't the question in this case.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: Well, Respondents waited a long time to come to that question.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Now, you answer that from the standpoint of what economic behavior would be in those circumstances.

I will overrule the objection with that understanding.

Mr. Stewart: That is different.

A. I should say in answer to this question that the form of behavior described there in the question is a form of economic behavior which we do not find in competitive economic practice. And using the word that has been brought into the question here, the word "unnatural," in the sense in which it is used in such discussion, namely, as being different from, or contrary to the principles of economics, as they would be elaborated in a competitive economy, in that sense I should say that this system of selling is unnatural.

Trial Examiner Norwood: I think we better take a recess.

Five minutes' recess.

6024 (There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Dr. Gray, referring to the answers that you have given to the last few questions I have asked, which included the words "natural" or "unnatural," have you based your answers to those questions on anything else outside of the hypotheses contained in hypothesis No. 1, or other assumptions that I have put to you in my questions?

A. I tried to base my answers on the description of the system as set out in this hypothetical question.

Q. If the statement were made to you that "Competition is the attempt by a seller to sell to, or the attempt by

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two or more sellers to sell to, buyers, each seller acting in his own interest and without regard to the interests of other sellers. That is, of course, a definition of competition of sellers, and there is a corresponding definition of buyers. The latter, however, is not very often used in economic discussion," would you say that the statement is correct?

A. That statement seems to mean that the buyers are in some way or other a minor element in the total market situation and are given relatively little consideration in economic analysis. I should dispute that general contention. As I have already tried to indicate, both buyers and sellers are essential and vital to market. One is as
6025 necessary as the other. You can't overemphasize one and neglect the other. You can't give greater weight to one than to the other. They are both fundamental elements in this competitive market as I have tried to picture it, and in economic analysis you find that great attention is given to both of these in, I should say, equal proportions.

Q. If sellers seek to rival each other in stressing particular qualities of their respective products, in assuring prospective customers of the uniformity and dependability and the quality of their products, in emphasizing punctuality in the delivery, and other services, even though the sellers are quoting the same price, is that in your opinion price competition?

A. I pointed out earlier in my testimony the distinction between price competition as used by economists and this other form, that is sometimes referred to as service or quality competition. There is a fundamental difference between the two.

In the analysis of markets, the price is the factor that receives by all odds the major attention. That is the central problem. Economists do recognize that there are these other elements, but they do not, I think, use the term "price competition" as meaning a rivalry or competition in respect to service or qualities or other means of attracting consumers. Price competition is the
6026 central problem with which the economist deals.

Q. May a manufacturing company seek to sell similar merchandise simultaneously in more than one place?

A. Will you read the question again, please?

Q. May a manufacturing company seek to sell similar merchandise simultaneously in more than one place?

6027 The Witness: Yes, they seek to do so.

By Mr. MacIntyre:

Q. Will you tell me whether or not you think it is correct to say that the seller sells all he can in the most favorable market or market place and then disposes of the surplus in other places?

Mr. Stewart: It is just whether it is correct to say. That is the question.

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Would that be a correct economic principle?

A. No, I don't think that is correct analysis. He could sell more in his local market if he would lower his price. What the question implies is that he sells all he can at some stated or assumed price level. Then having done that, he still has some surplus left over, which he sells at some other place at a reduced price.

Now, that, as I pointed out before, is not the way things are done according to competitive theory. He could only sell out to the natural or to the geographic margin of his area. Now, if he could not sell all his product in that area at a given price, he would have to lower his price.

By Mr. MacIntyre:

Q. Is it a part of economic principles that a seller

6028 will sell a part of his output, that is, the commodity he has for sale, in a home market at a price higher than he sells a portion of it at some distance place and at the same time permitting others to come in and take sales in his home market which he could not have taken by lowering his price?

A. I should say that that is not a practice which is found in competitive economics. He could not do that. That is the old problem of dumping and maintaining a price locally that is too high in the sense it would not move the product, and then selling at a distant point at some much reduced price or, as we call it, a dumped price. That is not competitive behavior.

Q. If a manufacturing company employs traveling salesmen, or what they allege to be traveling salesmen,

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would you as an economist consider that they are operating in a competitive market when they go out from the point of production to places throughout the country and carry the price quotations from which they are not permitted to deviate or enter into any bargaining with buyers over price?

A. I should say that a salesman in such a situation is not a part of the competitive bargaining process as visualized in economic analysis. If he has no power or no authority to make prices, but has to follow a systematic rule and quote prices that are fixed elsewhere, he is not, it seems to me, engaged there in a function that you
6029 could probably describe as part of the marketing function, as we use the term in economic analysis. He would be described as an order taker, or something of that kind, but I should not describe him in that capacity as a factor in a competitive market.

Q. From an economic standpoint--

Trial Examiner Norwood: Could he be a salesman without being a competitive factor?

The Witness: He might be doing some of these things that were referred to a moment ago,—of calling on customers, trying to induce them to buy from his firm instead of some other firm, boosting the quality of his product, and so on; but if that were what he was doing, and had no responsibility whatever in respect to the matter of price, it seems to me he would not be a factor in the price competition that I was referring to. That is the point.

By Mr. MacIntyre:

Q. From an economic standpoint can a true market said to be existing when negotiations on the part of sellers are handled by people alleged to be salesmen acting under instructions in the manner that I have outlined in the previous question?

A. No. It would seem to me that you do not have the type of market operation that is visualized there under a competitive system. The salesmen who are presumed to represent the sellers are not engaged in active price
6030 bargaining. They are merely seeking to place orders with their clients at prices already fixed. And as for the buyers who are thus put in that position, it seems to me there that they are scattered and isolated, and they never come into direct contact with the market as such. I should not regard that as a competitive situation.

Mr. Gilpatric: Mr. Examiner, I am going to ask that the last two questions and answers thereto be stricken, on the ground that during the course of our examination of our witnesses we were cut off from further questions on the use of salesmen and what function they perform, on the ground that there was no issue, there wasn't any question in the minds of the Commission on that point. Now we are having questions to show the contrary of what we intended to prove. I submit that is not proper examination.

Trial Examiner Norwood: I permitted the answers there with respect to the salesman and his function and that all other industries employed salesmen.

Mr. MacIntyre: Well, if Your Honor please, the questions that I am asking now I am asking in an effort to rebut the testimony secured in response to those questions appearing from page 4895 through 4901.

Mr. Stewart: Well, may I suggest the proper way to rebut the testimony is to quote the testimony of the witness to this witness, not your own construction. Let
6031 Mr. MacIntyre quote the testimony of the witness directly to the witness on the stand.

Trial Examiner Norwood: I shall deny the motion.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Dr. Gray, I am calling to your attention a set of assumptions appearing in the record beginning page 4901 and extending to and including part of page 4913, and which has been referred to in this record many times as a statement of facts in hypothetical question A.

I will ask you first if you are acquainted with that statement, if you read it.

A. Yes. Yes, I have read this.

Q. Is it necessary for you to read it again?

A. I don't think so.

Q. Keeping in mind that set of assumptions of fact set forth in that hypothetical question A to which I have just called your attention, I will ask you this question:

In your opinion as an economist, on the facts assumed in that statement, could such a marketing plan logically develop and continue to exist in an industry where competition prevails?

A. My answer to that would be "no." The use
2 of the word "logical" there would seem to me to
imply that there is something necessary and inevit-
e about this development, growth and elaboration of
s kind of a pricing system. I would not accept the
w that it is logical in the sense of being a necessary
velopment, nor would I accept the view that it could be
intained continuously without some artificial arrange-
nts there to maintain it.

Mr. Stewart: I move to strike out the answer, on the
ound that the witness is obviously not following the
ts stated in the hypothetical question. Instead he has
dertaken to put his own interpretation on the answer of
witness from whom Mr. MacIntyre is reading. That
not the function of an expert witness. If he is going
answer that, he must answer on the basis of those hy-
theses, not some other. It is obvious from his answer
has taken into consideration other elements.

Trial Examiner Norwood: Read the question and the
swer, both.

(Question and answer read.)

Mr. Stewart: He obviously adds other factors to the
estion.

Trial Examiner Norwood: Well, the counsel may cross-
amine him on that.

Motion denied.

By Mr. MacIntyre:

33 Q. Now, Dr. Gray, I am going to put to you a
set of assumptions.

Assume a manufacturing industry in which the product
ould be homogeneous, or standardized.

Assume that—

Trial Examiner Norwood: Off the record just a minute.

(Discussion off the record.)

Trial Examiner Norwood: Finish your question. I beg
our pardon.

Mr. MacIntyre: How far have I gone?

(Question read.)

y Mr. MacIntyre:

Q. (Continuing.) —there are several manufacturers
producers, and that some of them at least have a volume
production of considerable size and distribute their

products to a large number of buyers widely scattered geographically.

Assume that the producers have plant capacity in excess of what is required to meet the demands.

Assume that the product is relatively heavy in relation to its value, so that the cost of freight is a substantial element in the total cost of delivering the product at any considerable distance from the point of production.

Assume that there is also a considerable element of overhead cost, that is, cost of production of the product.

6034 If those factors were present in an industry, would you say that the basing-point method or system of price quoting as outlined in either the hypothesis A or hypothesis No. 1 would be inevitable, or would something else be necessary to bring it into existence?

Mr. Gilpatric: I object to the question on the ground that it is irrelevant and immaterial whether it would be inevitable or not.

Trial Examiner Norwood: Objection overruled.

Mr. Robison: As far as I know, no one has made such a claim, Mr. Examiner.

Trial Examiner Norwood: Overruled.

Answer the question.

The Witness: Without attempting to analyze each one of these separate assumptions—

Mr. MacIntyre: You can have those reread, if you care to.

The Witness: That would take a long time to go into those in great detail, and without attempting to go into them, I would like to say this, that the presence of such—

Mr. Robison: Now, Mr. Examiner, I dislike to interrupt, but I think the witness should not be allowed to base a statement of opinion on assumptions put to him unless he takes those assumptions into consideration.

Trial Examiner Norwood: If counsel will just wait

6035 until he gets through, I will entertain a motion to strike.

Complete your answer.

A. Well, these characteristics as outlined in these assumptions would not necessarily mean that the industry in question would have to use a basing-point system. We have many industries where you have large plants, overhead costs, and these other characteristics mentioned here, which operate under entirely different arrangements. It

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does not necessarily follow that because these elements as described here exist—and I am assuming here that they do exist, because that is the basis of the question—it does not follow that you must have a basing-point system just because you have those conditions.

Now, in that sense one could not say that the basing-point system is essential and necessary as growing out of a stated set of conditions. You will find many examples where you have these various characteristics mentioned where you do not have a basing-point system.

So I would conclude that these characteristics do not make a basing-point system necessary and essential and indispensable at all. But, as I have stated before, it seems to me that such a system could have arisen only by some sort of arrangement among the parties concerned, and not inevitably out of the natural economic forces that lie behind these so-called characteristics. That is my general interpretation.

Trial Examiner Norwood: Would the basing-point
6036 system be one result which might be expected to follow those conditions?

The Witness: No, I would not say it might be expected. That would imply to me an element of predictability. You say, "You have these conditions, therefore you must have a basing-point system." No. I would regard the basing-point system here as not growing out of the fundamental conditions.

Mr. Stewart: I move to strike out the answer, so much as offers the opinion of the witness to the effect that it must be the result of arrangements, as not lying within the province of the witness, and being an attempt to determine one of the ultimate issues in the case.

Trial Examiner Norwood: Well, I think that that is opinion material which the counsel for the Commission may bring out. Whether or not it is directly responsive there, however, it is a part of his explanation.

Mr. Stewart: That is right. It is not at all responsive. It was purely gratuitous.

Mr. MacIntyre: I certainly think it is responsive to the question I asked.

Trial Examiner Norwood: Motion denied.

Mr. Robison: Having reference to the objection I made to an answer which was partly given to a question, as I understand the witness' subsequent answer, he was taking

into consideration all of the assumptions that he was
6037 asked to, and therefore I have no further motion to make with reference to his answer.

Trial Examiner Norwood: Yes.

6038 By Mr. MacIntyre:

Q. I had given the set of conditions that I have assumed as existing in an industry.

Is it a part of economic theory that the basing-point system or method of price quoting such as is outlined in either the hypothesis A or hypothesis No. 1 would normally eventuate?

Mr. Stewart: I object to the question, first, on the ground that if you compare the two hypothetical ques-
6039 tions they are in contradiction, so that you have to first determine which part of the hypothetical question the witness is relying on; and, secondly, it is entirely immaterial, because nobody has ever contended that this basing-point system has logically developed, or normally, or whatever Mr. MacIntyre wants to call it.

Mr. MacIntyre: Well, on the basis of the concession by counsel for the Respondents that they do not contend that the basing-point system has naturally, logically, or normally developed, I will not pursue that matter further.

Mr. Stewart: I have made no such concession as that.

Mr. MacIntyre: Now, if they do not concede it, I insist on following the question through.

Mr. Austin: You don't have to scream, though, do you? My God!

Trial Examiner Norwood: That is just counsel's zeal.

Mr. Austin: It makes me sick, though.

Trial Examiner Norwood: What is the situation there? Is a question pending?

Mr. MacIntyre: There is a question pending, and there is an objection.

Mr. Stewart: Well, it ought to be sustained.

Trial Examiner Norwood: Objection sustained.

6040 You can bring out those things one at a time, if you want to.

Mr. MacIntyre: In the last question the word "normally" is the only one included, if Your Honor please. It is a new question. May we have it read?

Trial Examiner Norwood: Oh, yes. I beg counsel's pardon.

Answer the question.

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Read the question.

(Question read.)

Trial Examiner Norwood: Now, the objection is overruled, and you may answer the question.

A. The answer is "no," and in order to explain the answer I would necessarily have to say what I mean.

As economists use this term "normally," they refer to a competitive situation. That is the traditional usage of the term. So when they say that something develops normally, they do not mean naturally or inevitably, but it develops out of the operations of a competitive economy.

Now, using the word in that sense,—I think I am using it in the ordinary sense which economists do use it,—I should say that the basing-point system described here does not develop out of the normal operations of a competitive economy.

By Mr. MacIntyre:

6041 Q. Now, referring to the basing-point method or system of delivered price quotations which is presented to you in this hypothetical question A, is the basing-point method as there presented substantially one that you as an economist would recognize as a competitive method of pricing and selling merchandise?

A. I have already indicated my view that—my opinion that I would not recognize that as a competitive merchandising method. I think I have already developed the reasons why I would not so consider it.

Q. According to any business behavior observed by you or studied by you as an economist, would the use of any such method arise naturally as the result of competitive forces?

A. No, it would not. Based on my observation and study, I am led to the conviction that such arrangements arise by artificial contrivances, and not by any so-called natural methods.

Trial Examiner Norwood: You mean, it is your opinion that they could arise only by artificial methods?

The Witness: Yes, sir.

By Mr. MacIntyre:

Q. In order to have such a method used, would certain of its elements have to be planned in concert with other manufacturers or sellers?

6043 A. Yes, I think so.

By Mr. MacIntyre:

Q. Under the conditions stated in hypothetical question A, in your opinion as an economist is each conduit manufacturing company selling in a single market, or in several markets, or any market at all?

A. Well, under the system as described, I would
6044 say that the destinations of particular buyers do not constitute a market. I tried to make that point earlier in my testimony. And that the system tends to have this effect of scattering or disintegrating the market by the separation and isolation of buyers, so that you no longer have that concept of a market functioning in a place, in open free meeting, the bargaining with buyers and sellers.

Mr. Gilpatric: I object to the answer as not responsive to the question.

Trial Examiner Norwood: Objection overruled.

By Mr. MacIntyre:

Q. Under the conditions stated in hypothetical question A, in your opinion as an economist, what advantages, if any, accrue to the conduit manufacturing company selling under that method?

Mr. Stewart: What method? I object unless the method is specified. It doesn't mean a thing.

Mr. MacIntyre: May we have the question read?

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Stewart: What method? We are not supposed to carry this hypothetical question in our minds.

Trial Examiner Norwood: Objection overruled.

Mr. Stewart: It seems to me Mr. MacIntyre ought to specify.

6045 Trial Examiner Norwood: Please let him answer.

A. The only advantage that I can see to manufacturers of such an arrangement would be that they feel that they make greater profit by this method than they could make under a competitive system of marketing.

6046 Trial Examiner Norwood: I will ask the Doctor to answer directly there if he knows what advantages would accrue to the people who employ this method, according to his knowledge of economic behavior, and so forth.

The Witness: Well, I think, in a very brief form, that one sentence which I understand still remains there is a—

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is an answer. There may be other reasons, of course, but after all if they didn't see it to their own self-interest to have such a system, I don't see why they should have it.

Trial Examiner Norwood: Well, what advantages, what economic advantages, would accrue to them, in the way of increased profits, or—

The Witness: Yes, I think I have already men-
6047 tioned that the increased—

Trial Examiner Norwood: Well, repeat that, Doctor, because I think some of it has been stricken.

Mr. MacIntyre: Well, may we have it read—

Trial Examiner Norwood: No. I think you can complete this.

Mr. MacIntyre: —so that the witness may know what is stricken?

Mr. Stewart: We know what is stricken.

Trial Examiner Norwood: No. It is merely adding to the confusion.

Go ahead.

The Witness: Well, I think the main purpose is to increase their profits.

Trial Examiner Norwood: You think that that would be a result?

The Witness: Well, yes, I think it would. It may not be the way to maximize profits, but it is a way to increase profits over and above what might be secured by some other method.

By Mr. MacIntyre:

Q. In order to be in a position to carry on a practice of mutual dumping, as you have defined that term for us here today, in an industry operating under conditions out-
lined in hypothetical question A, what marketing ar-
6048 rangement would appear to you as an economist to be usable by the manufacturing companies?

Mr. Stewart: Wait until I get the question, please.

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Go ahead.

A. In order to carry on this so-called mutual dumping, as I explained heretofore, the manufacturers would have to be in a position to control their local price situation in order that they could dump; otherwise, it would seem to me they couldn't dump in the other fellow's territory. Now, the other fellow would seem not to object under the

system, so long as they are all free to do it, so it is mutual. It seems to me that some kind of system such as you find in operation—or is alleged to be in operation here, is a system which would achieve that end of making it possible for each manufacturer to dump or to have mutual dumping and still, despite that wastage there, to realize a return on their enterprise.

Q. Under the conditions assumed under hypothetical question A, if the use of the basing-point method yields varying net amounts per unit of product to the conduit seller on sales made to different buyers, is or is not that result disadvantageous to the seller's customers who pay the higher mill nets?

A. Well, the people who live—or the buyers whose
6049 place of business is in the territory nearest the mill are the ones who pay this—the highest mill net, and the ones who are farthest away pay the lowest mill net, but the significant point here seems to me to be that in each case they pay the delivered price; that is, the base price plus the freight to point of destination, so that the buyer, irrespective of where he is, pays the base price plus the freight, so that, while the ones nearest the mill do pay a higher mill net, I wouldn't say that they get an advantage from it because after all they must pay the base plus the freight.

Q. Under the conditions of a basing-point system of delivered price quotations, as outlined in hypothetical question A, would you as an economist expect to find identity of price quotations submitted by conduit sellers in bids for public opening?

A. Why, yes, it seems to me that the system is so designed and so operated as to yield that final result, so I should expect that prices would be identical—delivered prices, make that.

Q. Would such identity or uniformity in such price quotations in such bids indicate to you as an economist the absence of competition among the conduit sellers?

A. Yes, I—I don't see how one could draw any other conclusion that there was an absence of competition there.

Q. Would you as an economist infer from such
6050 identity or uniformity in public bidding the existence of an agreement or understanding or other form of collusive activity among conduit sellers in making prices?

Mr. Stewart: I object to that on the ground it is not

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the subject of economic testimony, and it is an attempt on the part of counsel to elicit from the witness an answer as to one of the ultimate issues in the case.

Mr. MacIntyre: Well, if counsel wants to take that position, then I move that the answer to that question which appears beginning at line 19 on page 4949 be stricken, the answer of Dr. Fairchild.

Trial Examiner Norwood: Objection is overruled and the motion is denied.

Mr. Stewart: I don't see that that follows at all because Mr. MacIntyre was asleep; that is no reason why I should be deprived of my rights.

Trial Examiner Norwood: Objection overruled. Motion denied.

Answer the question.

The Witness: I would like to get it stated again.

Mr. MacIntyre: Read the question.

Trial Examiner Norwood: Read it.

(Question read.)

A. Yes, I think I would be forced to that conclusion because it is impossible to explain such an occurrence
6051 in terms of the ordinary operations of a competitive economy.

By Mr. MacIntyre:

Q. Let us assume that the evidence shows that a very substantial number of manufacturers of conduit submit to a contractor bids for his requirements of conduit for a proposed building which are at the same delivered price for the same quantity and kind and specification of conduit for delivery at the same specified time. Would you, as an economist, infer from that evidence that the sameness in price was due to an agreement or understanding or other collusive activity among the manufacturers?

Mr. Stewart: Same objection.

Trial Examiner Norwood: Overruled.

A. On the basis of the assumption as stated, I would conclude that there was an agreement among the manufacturers.

Q. Given that statement of facts, I ask whether that result would naturally flow from the working of economic forces?

A. No, it would not, and in that connection with that answer I would say again that—

Mr. Stewart: Now, I object. I think that the answer is "no", and—

Trial Examiner Norwood: Let him explain it.

Mr. Stewart: I don't know what other explanation there could be than that. He says, "No, it wouldn't follow from the operation"—

6052 Mr. MacIntyre: Well, let us find out.

A. Such an arrangement—such an arrangement could not develop out of the operations of a competitive system.

Trial Examiner Norwood: Go ahead.

Q. Are varying factory net proceeds per unit sold inconsistent with the principle that prices charged by a seller in his sales to different buyers tend to be uniform under competitive conditions in any market?

A. Yes, it is contrary to the general law of uniform price, which I outlined earlier. Under that system prices would be uniform in a market. Here we find that the price is measured by the varying mill net difference. It is not a competitive phenomena.

Q. In your opinion as an economist, are varying factory net proceeds per unit sold indicative of a failure of the seller to follow his self-interest in a normally competitive market when at the same time that he is permitting sellers who produce at other points to take customers from him near his point of production?

A. Well, as I have already indicated in my previous answer, he certainly is not acting competitively when he uses this practice of varying mill nets and allows others to ship into his territory where he has a natural advantage and which business he would have if he were operat-

6053 ing on a competitive basis.

Q. Assume that each conduit seller generally refrains from quoting f. o. b. its place of production or shipment prices, that is, prices f. o. b. the place of production or shipment, that are independent of and unrelated to delivered price quotations determined from a basing-point formula. Would the fact that he so refrained indicate to you as an economist a lack of competition?

A. Yes, that—that goes to the whole concept of a market. As I explained, by refusing to make an f. o. b. mill price you simply do not have a market in the true sense.

Q. From your observations of business behavior and

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studies of economics, if a conduit seller generally refrained from quoting f. o. b. its place of production or shipment prices that were independent of and unrelated to delivered price quotations determined from a basing-point formula, to what would you as an economist attribute that refusal?

A. I should attribute that refusal to some—some arrangement or understanding by means of which he acted in concert with others to refrain from making an f. o. b. mill price.

Q. If each conduit manufacturing company were forbidden to use the basing-point system of delivered price quotations by an order of a Government commission, in your opinion as an economist would that result in fostering or restricting competition?

A. I think it would result in—in fostering compe-
6054 tition, but I should add here in that connection that the abolition of this system would not in and of itself automatically restore perfect competition. I don't think any economist would maintain that, but it would—as the word "foster" indicates, it would foster or promote, increase the amount of competition in the industry.

Q. One more question on this line on the same supposition: Assume such an order. Would it result in generally lower costs of conduit to buyers?

A. I think it would. If you could have f.o.b. mill quotations, if you could cut out all the wastes of cross-hauling that occur under this system, and if you could restore competition, or some greater degree of competition, I think it would result in the lowering of prices to buyers.

Trial Examiner Norwood: I think we might as well recess. Are you going to commence a new subject there?

Mr. MacIntyre: Yes.

Trial Examiner Norwood: We might as well recess until tomorrow. Recess until 10 o'clock tomorrow morning.

(Whereupon, at 4 o'clock p. m., March 10, 1942, the hearing in the above-entitled matter was adjourned.)

6056 PROCEEDINGS.

Trial Examiner Norwood: Hearing come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is reconvened to Room 388, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., Eastern War Time, March 11, 1942.

Please note the appearances.

Dr. Horace M. Gray will resume the stand for further examination.

You may proceed.

HORACE M. GRAY resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. MacIntyre.

Q. Dr. Gray, in paragraph 21 of the statement of facts, —that is, hypothetical question A,—it is stated that, "During the last eight years there have been as many as fifteen changes in the quotations of conduit prices published by various conduit manufacturers, the periods of time between the dates of such changes varying from less than a month to approximately a year and a half."

Now, assuming that that statement states facts, do such facts indicate to you as an economist an absence of competition?

6057 A. On the basis of the facts as stated, it would seem to me that that indicates a considerable rigidity of prices over the period in question, and that such rigidity is not ordinarily thought of as characteristic of a competitive situation. It seems to me that the basing-point system does tend toward rigidity, whereas a market in the sense that I have defined the term would be characterized by a very considerable degree of flexibility to reflect changing demand and supply conditions in the area in which that market place existed.

Q. How do you as an economist define the term "cross-hauling"?

A. I should define cross-hauling in the broad sense as describing a situation where one seller sells into the advantage territory of another, and that second seller sells back in the advantage territory of the first, with the result that

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you have there shipments moving in opposite directions beyond the natural market areas, and this extra shipment, extra cost of transportation, I should regard as a form of economic waste.

Q. Do you, as an economist, regard the existence of cross-hauling as an indication of competition or of monopoly?

A. I should regard it as an indication of monopoly. As I pointed out in my previous testimony, I think it could not exist in a truly competitive situation.

6058 Trial Examiner Norwood: Well, would it exist in a perfect monopoly?

The Witness: Yes, it would—it would exist in a—might exist in a state of monopoly or in a state of what some writers call imperfect competition, which is—tends toward monopoly.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Is it a part of generally recognized and accepted economic theory that cross-hauling is an indication of the existence of competition?

A. I know of no such body of economic literature which holds that view.

Q. Under the conditions assumed in hypothetical question A, or in hypothesis No. 1, is the cost of cross-hauling as there involved a burden to the buyers?

A. Yes. I don't see how it can be otherwise, because the over-all cost of this form of economic wastage representing cross-hauling must be borne by the consumer. He must in the last analysis pay prices high enough to cover the cost of such cross-hauling.

Q. Assuming the existence of a state of effective or keen competition among sellers; then if the choice of a location of the production of one of them is near a market, in your opinion as an economist would the savings in trans-

6059 portation cost from the point of production to the buyer accrue to the customers in whole or in part?

A. Under the state of competition which is assumed in your question, I shall answer that the buyers in that area would benefit from the low cost of transporting goods. The pressure of competition would lead sellers to lower their price and the buyers would benefit.

Q. As an economist, what do you understand by the term "administered prices"?

A. "Administered prices" is a term that has come into very common usage in recent years. In my judgment, it means a—that you have a formal system of prices, price structure, which is centrally administered by some controlling body or group.

Q. Do you, as an economist, consider that when a seller is using administered prices in his quotations and sale that he is using competitive prices?

A. No. In a—in a market where you had effective competition no one would be in a position to fix a price or to administer it. On the other hand, in an administered price system someone must necessarily have the power to establish the price structure and to manage or administer it.

Q. If there were an identity of quoted prices for a standardized commodity at a particular destination from which the sellers are located at different distances
6060 freightwise, would that identity of quoted prices indicate to you the absence of a competitive market or the existence of an agreement?

A. It would indicate to me that there was an absence of competition and some understanding, otherwise it would seem such an improbable thing as to be almost unexplainable except in any other terms.

Q. If a seller makes a practice of accepting from his various customers different sums of money per unit for his standardized product, and if there were not differences in the quantity or cost of selling involved, does that indicate to you, as an economist, a lack of competition?

A. Yes, it does. The facts as stated reflect what we term a price discrimination, which is a thing that is not found in competitive markets.

As I pointed out previously, in a competitive market you find a uniform price and not a discriminatory price.

Q. Under the conditions assumed in hypothetical question A, as an economist, will you state whether or not it is possible for a basing-point method of quoting prices to develop from the play of natural economic forces without any collusive or coercive activity on the part of manufacturers or wholesale distributors or agents selling rigid steel conduit for their suppliers or manufacturer principals?

6061 Mr. Stewart: I want to object to that question as asking the witness to pass upon one of the ultimate

issues of the case, the witness not being qualified to answer that question.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. Such a system, in my opinion, could not arise from the natural economic forces. I see nothing whatever in economic forces that would produce such a system. It necessarily involves some artificial arrangement.

By Mr. MacIntyre:

Q. Professor, how would costs be affected in any way if uniform f. o. b. mill prices were used instead of a system of basing-point delivered price quotations?

Mr. Stewart: I object unless that is confined to the conduit business. It is immaterial, and until the witness shows that he has some knowledge of the conduit business I submit that he is not qualified. The mere fact that Mr. MacIntyre did not object to a question on our side does not justify you in overruling our objection.

Mr. MacIntyre: I objected to the question.

Trial Examiner Norwood: I take it that the Commission wants to know the answers to these questions that
6062 the counsel thought important enough to ask and were not objected to.

Mr. MacIntyre: It so happens that that question was objected to.

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. The introduction of an f. o. b. mill price in place of the existing basing-point system—

Mr. Stewart: What kind of a basing-point system?

Mr. Robison: Existing.

Mr. Stewart: Oh, existing. I thought you said "distant."

The Witness: Yes.

A. —would, in my judgment, bring about a reduction in the costs of production. It seems to me that under an f. o. b. mill price, or system, you would cut out the wastage of cross-hauling and you would be able to lower your price because you no longer have to support that wastage, and that would open the way for price reductions in the local area where this particular mill has an advantage. They could increase their production for their local market and

thereby gain economies from increased volume. So I think the upshot of it would be that you would have a reduction of costs.

By Mr. MacIntyre:

Q. In your opinion as an economist, does mutual
6063 dumping serve to increase the output of the industry as a whole?

A. No, I do not see how it could possibly do so. Mutual dumping means simply an interchange of products, each shipper shipping into the advantage territory of others and allowing them to ship into his advantage territory so that it all cancels out and the total volume of production in the industry could not be increased with—by such a method.

Q. In your opinion as an economist, does mutual dumping tend to increase the volume of production of an individual mill?

Mr. Stewart: Now, just a minute. You mean that there is one mill with mutual dumping, or two mills? Which? I object to the form of the question.

How many mills are there involved?

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: There would be more than two.

Trial Examiner Norwood: Off the record here.

(Discussion off the record.)

Trial Examiner Norwood: Read that question, please, sir.

(Question read.)

Trial Examiner Norwood: I think that is clear.

You mean each individual mill engaged in the mutual dumping.

Mr. MacIntyre: Of any of the mills participating
6064 in the dumping.

Trial Examiner Norwood: Objection overruled.

Answer.

Mr. Stewart: Since it has been clarified, it is all right.

Trial Examiner Norwood: Go ahead.

A. The answer is "no." The system of mutual dumping, as I pointed out before, cancels out, and the one, if it is a single mill that is under consideration in the question, would ship into another mill's territory, and they would ship back into his. I do not see how that single mill could expect an increase in its own volume.

By Mr. MacIntyre:

Q. In your opinion as an economist, does simple dumping, that is, dumping by a single mill, tend to increase the volume of production of the industry as a whole?

A. I think it would not. If you had dumping by a single mill, as you state, that single mill would ship part of its product into the territory of other mills and simply take business away from those other mills into whose territory it shipped. But once again it would balance out through the loss of another, and the total for the industry would not be affected.

Trial Examiner Norwood: Would you say it would not be any advantage to some particular mill whose situation
6065 narrows his field of activity? You say it would not be an advantage to that particular mill to dump on occasion?

The Witness: No. I said if one mill dumped and the other did not, which would be involved in the question, that the added volume which the first dumping mill gained by dumping would be taken away from some other mill into whose territory it dumped, so that the total volume of an industry would not be affected.

Trial Examiner Norwood: I am asking with respect to a particular mill, whether or not a particular mill could get the best of the situation.

The Witness: If one particular mill did it, and the others did not dump into its territory, the one mill would gain at the expense of the others.

By Mr. MacIntyre:

Q. In your opinion as an economist, does the basing-point system of delivered price quotations operate to reduce the cost to buyers?

A. No. I think it would have just the contrary effect by maintaining prices at a level higher than is necessary because of the wastes involved. You would restrict consumption, restrict demand, and buyers would have to pay these added costs.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Cross-examine.

6066 *Cross-Examination by Mr. Robison.*

Q. Dr. Gray, you have qualified here as an expert in the general field of economics, have you?

A. Yes. I stated that in my qualifications which were submitted.

Q. In a written paper you mean you submitted them?

A. Yes; that written statement.

Q. Yes.

And you consider yourself an expert in the general field of economics, do you?

A. Well, I might make some modest claims in that direction.

Q. Well, do you mean by that, that, leaving out any considerations of modesty, your answer would be "yes"?

A. Well, the reason I used the word "modest" there was that no one individual can know everything, of course.

Q. Well, are there some special or particular branches of the field of economics that you have dealt with more than other fields?

A. Yes, sir.

Q. And what are those fields?

A. In recent years, as I pointed out in my statement, I have given the major portion of my attention to problems lying in the field of monopoly, the study of monopoly problems in the various fields. Most of my teaching and study in recent years has been in connection with various
6067 problems of the monopoly situation.

Q. And just what do you mean by "the monopoly situation" when you say that?

A. Well, the whole area of monopolistic practices, of monopolistic organization in industry, of the Government's various efforts over the years to try to get at these problems, exercise some control over them. It covers a broad range of economic history, economic theory, industrial organization, and other related matter, all of which I have given consideration to in my study of economics.

Q. Now, what I want you to do, if you will, Dr. Gray, is to assume that I do not know anything about the meaning of the word "monopoly," and tell me just what you mean by the word "monopoly" as you have used it.

A. I use it, I think, in the sense that is generally accepted among modern economists; that is, in a relative sense. We recognize that there is not, and never was, what

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you would call an absolute monopoly. That conception is simply not a workable one; that monopoly is always a matter of degree. You have some monopolies that do approach absoluteness, although they never quite attain it. You have others that are far removed from anything approaching absoluteness. And yet there would be a substantial body of restrictions there that would justify the classification of that particular industry as a monopoly, but is not in the absolute sense.

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That is my general position.

Q. Well, now, you have told me some of the characteristics of monopoly in that answer, but still, if I did not know what the word "monopoly" meant, never heard it before, I would not know what you meant by it, would I? Now, I ask you to tell me what you mean by "monopoly."

A. Well, I think I have given you the general—

Q. You have given me certain characteristics, but you have not told me what you mean by the term "monopoly."

A. Oh, I see your point there.

I should say that a monopolistic situation is one in which there is a sufficient amount of restraint of one kind or another, infinite varieties almost—I should not use "infinite"—there are many varieties of monopoly restrictions. Now, if the total effect is that these restrictions taken together result in a price system which is not such as would be reasonably expected under competition, then I should say that that is monopoly, meaning there are sufficient restrictions there, taken all together, to control the price.

Q. Well, does that mean that you consider that any forces of whatever nature would cause a price to be different from what you would expect it to be in what you have referred to as a true competitive market cause the market to be monopolistic, as you use the term?

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A. No, I would not go that far. You have in any market numerous forms of imperfection which make that market something other than a perfectly competitive market. There again you never achieve perfection in the sense of perfect competition. There are all sorts of minor imperfections in markets, and where they exist I would not term that situation necessarily a monopolistic practice.

Q. Well, at what point in the existence or accrual of imperfections in a market do you begin to call the market monopolistic?

A. Well, I think where you are dealing with this matter

of degree that you have to take a practical position of some preponderance of factual evidence as to what are the predominant influences here. You simply have to form a judgment based upon all the factors in the market, and if the preponderance of those factors tended to make the situation competitive, I would describe it as a competitive situation. On the other hand, if the preponderance of those factors tended to establish a situation which departed quite widely from a competitive situation, I would describe it as monopolistic.

Q. Well, now, still you have not answered my question. You have told us, if I understand you rightly, every existing market is an imperfect market. Am I right thus far?

A. Well, I should hesitate on the word "every" there.

I would say most markets do contain some imperfec-
6070 tions.

Q. Well, just to diverge from the line of thought for a moment, can you name for us any market that you would consider a perfect competitive market?

A. No. I should hesitate to name any particular market and say that it is perfectly competitive.

Q. Yes.

Well, do you have any reason to think that there is any such market existing?

A. Well, it is conceivable, but I do not—

Q. No, I am not asking you for the exercise of your imagination, Professor Gray. I am asking you for your knowledge of the existence of any market that you would call a perfect competitive market.

A. No. I do not think I ever discovered any such market. In practice you find in any situation you look into certain imperfections. It is a question there of the amount and the degree and the influence of those imperfections.

Q. Now, that gets me back to the question which I asked before, and which you did not answer.

At what point in the existence or accrual of imperfections in a market do you first begin to refer to it as a monopolistic market?

A. I think I answered that question.

Q. I do not think you did. If you did, I would like
6071 you to answer it again.

Mr. MacIntyre: If Your Honor please, the question has been answered, and I ask that the second answer back

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of the witness be read and it will disclose that it is an answer to the pending question.

Trial Examiner Norwood: He stated that that point was where he saw the preponderance on the one side or the other. Now, if the Doctor can refine on that, I would like for him to do it.

The Witness: I think my previous answer there gave my general point of view, and—

Trial Examiner Norwood: Would you not characterize this market as monopolistic until it was preponderantly monopolistic?

The Witness: Well, I did not put it quite that way. I said considering all the elements of restraint or restriction that might be found, if the total effects of those was, on the price situation, such as to remove price pretty far from the competitive price, I should regard that as in the balance of monopolistic.

By Mr. Robison:

Q. By what criterion do you as an economist determine whether a price in a market has been removed from a competitive price?

A. Well, one simply has to dig into the situation and
6072 analyze the behavior of the price and the various factors on the supply side and on the demand side which go to make up that total market situation.

Q. Well, if you knew exactly what the demand situation in a market was, and exactly what the supply situation in that market was, could you as an economist determine what the price of the commodity sold in that market would be?

A. Well, I would think that was not the way we would approach it.

Q. Well, I would like a "yes" or "no" answer to my question.

Trial Examiner Norwood: Could you on that data determine what the price was? Answer it "yes" or "no."

The Witness: I would answer "no," but I would like to explain my answer.

Trial Examiner Norwood: No. The counsel on the other side will give you an opportunity to explain.

By Mr. Robison:

Q. In answer to questions asked by Mr. MacIntyre, you used, or he used and you answered questions which in-

cluded the terms "imperfect competition" or "monopolistic competition." Are you familiar with those two terms as used in economic literature?

A. Yes, sir.

Q. As generally used in economic literature does the term "imperfect competition" indicate the absence
6073 of actual and active competition?

A. Not necessarily. If you use the term in a broad—

Q. Well, you have answered my question.

Is it true, then, that in a market where an economist would say that imperfect competition exists that actual and active competition may be operating?

A. I think the economist would have to base his judgment there on the extent and the degree and the effect of these imperfections.

Q. Well, I am not asking you about a matter of degree. I am asking you that, in the conception of an economist, and having reference to an economist's use of the term "imperfect competition," whether that might be the case, as indicated in my question.

A. I think that an economist could answer that question without answering it in terms of the very imperfections which are at the heart of your question.

Q. I have asked you whether, in the conception of an economist, it is possible that in a market where an economist would say there was imperfect competition—I repeat, whether it is possible that in that market competition may be both actual and active.

A. An economist might, if he felt that the degree and the influence of those imperfections were a minor element,
so that that was a competitive situation despite the
6074 presence of these imperfections.

Q. Let me ask you this: Do you consider that all of the imperfections in competition which tend to take a market out of the field of perfect competition, as you have used that term, are reprehensible in nature?

A. No, sir.

Q. Would you say that all such imperfections are monopolistic?

Mr. MacIntyre: I submit that question has been answered two or three times.

Trial Examiner Norwood: Read the question.

(Question read.)

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Mr. MacIntyre: It is objected to because—

Trial Examiner Norwood: Objection overruled.

A. I would not regard those imperfections as monopolistic if they were of a minor character.

By Mr. Robison:

Q. Well, then, is it accurate to say, Dr. Gray, that the distinction between imperfections in a market—and I mean imperfections with relation to a market of perfect competition—that a line of distinction as to those imperfections as to whether or not they are monopolistic rests solely in the judgment of economists?

A. No. I think that would be—for economists to say that would be arrogating to themselves somewhat too
6075 large an assignment. It is not the function of the economist to proclaim what should be public policy with respect—

Q. No, I am not asking you with respect to public policy, nor am I asking you any question of law. I am asking you to speak purely as an economist, and I am trying to find out what is the line of demarcation between imperfections in competition that you would consider monopolistic and those that you would not consider monopolistic.

Mr. MacIntyre: I submit that question has been answered three or four times; therefore, I object to it.

Trial Examiner Norwood: Objection overruled.

The Witness: Off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Read the previous question and then his enlargement or explanation.

(Record read.)

Trial Examiner Norwood: Now, do you understand the question as explained?

A. Answering the first question, the one involved here, I should say that the economist, as an economist, can form a judgment, but that is not exclusive; it does not preclude other people from forming other judgments.

By Mr. Robison:

6076 Q. And who do you include in the term "other people"?

A. Well, by definition, I suppose all non-economists would think otherwise, would think in different terms.

Q. Then, you recognize, do you, that an individual who is sometimes referred to as the man in the street might differ with your views as to whether there was a monopoly in a given situation?

A. Oh, yes. I think the man in the street would probably differ from the professional economist. We find that quite common.

Q. Do you consider that the average honest business man might differ from your views in his views as to what is monopolistic?

Mr. MacIntyre: I object to the characterizations in the question.

Trial Examiner Norwood: Objection overruled. This is cross examination.

A. Yes, I think the business man might disagree with my views. He would think in entirely different terms, and, as far as I know, he would be perfectly honest in his point of view. He just sees things from a different point of view.

By Mr. Robison:

Q. And would you be so frank as to admit that he might be just as nearly right as you?

Mr. MacIntyre: Now, I object on that score as to 6077 who could be right, it is so speculative. Let us apply it to a specific situation.

Trial Examiner Norwood: Objection overruled.

A. Well, as an economist, with some pride of profession, I would be inclined to think that one who has studied the matter and has made an intense analysis over the years might have a little broader view and seem to think somewhat more clearly than the ordinary citizen. That is no reflection, of course, on the citizen. It is—

By Mr. Robison:

Q. Yes, I understand that.

Now, that brings us back to the question I asked you before: Isn't it true that in your conception of the matter the line of demarcation as to whether imperfections in competition are monopolistic or not in the last analysis rests in the judgment of economists?

A. If I understand your question, I think the economist has a point of view here. I have tried to state my position on it. That is, we will say, the point of view of the economist. I do not profess—

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Q. Yes.

You considered the point of view of an economist, a trained economist, to be more accurate and more reliable in that respect than that of the business man, did you, as you indicated in the former answer?

6078 A. I said in response to your first question that he had a somewhat broader view of the total situation; whereas I think the business man tends, and necessarily so, to look at the thing from his point of view, from a single point of view.

Q. Would you say that he looks at it from a more practical point of view?

A. Well, practical in his sense of the word; perhaps not practical from the over-all point of view of general economic welfare.

Q. Well, the economist deals largely with theories, does he not?

A. Yes.

Q. And in giving the answer that you gave me a few minutes ago about your thinking that the trained economist would have a broader view of the question did you mean that you should not be understood as thinking that the view of an economist with respect to whether practices were monopolistic or not would be more accurate and more reliable than the view of a business man?

A. I think the economist would maintain that—

Q. No. I asked you if you meant to be so understood. I think that is capable of a "yes" or "no" answer.

A. Well, I do not want to be misunderstood here in saying that the view of an economist must be accepted by all people. I can only outline the situation. What is done

6079 about it is quite another matter. I do not profess to be testifying on that.

Q. No, I did not ask you about that, either, Dr. Gray. I asked you whether, in your previous answer to me, you meant that you should be understood as indicating that you did not think that the views of an economist as to whether imperfections in competition were monopolistic or not are more accurate and more reliable than the views of a business man?

6080 A. I should answer in these terms, that the judgments of the economist, it would seem to me, would be more reliable in this situation because they are based on a broader approach to the problem than the—broader ap-

proach than that of the business man or other non-specialist in economics.

By Mr. Robison:

Q. Well, then, to get back to a former question, what, in your view, is the criterion on which to determine
6081 whether the imperfections in competition are monopolistic or not, other than the judgment of economists?

Mr. MacIntyre: I object to that. It has been answered a half dozen times.

Trial Examiner Norwood: Objection overruled.

Answer it this time.

A. I don't think I can answer it in any other terms except to say that all the factors in the situation must be analyzed and weighed, and out of the—this process of analysis economists must come to some over-all judgment.

By Mr. Robison:

Q. Well, then, it is the judgment of the economist; isn't it?

A. Well, yes. I don't think it professes to be anything else.

Q. It took a long while to get to that.

Are you familiar with the origin of the term "monopolistic competition" in economic literature?

A. Yes.

Q. Can you tell us who first used that term, in so far as you know?

A. As far as I am familiar with the usage of the term, I should assign the term to Mr. Chamberlain, Professor Chamberlain, of Harvard, who brought out some years ago a little book on monopolistic competition.

6082 Q. And prior to that you had never heard of the term?

A. Prior to that time I had not seen the term used in—in that way that he used it.

Q. Are you familiar with the way in which an English economist whose name, I think, is Joan Robinson, or was Joan Robison, used it?

A. Yes. She published a book entitled "Imperfect Competition."

Q. Did she also use the word "monopolistic"—term "monopolistic competition"?

A. Well, that is a question of fact that I am not immediately prepared to answer now. Whether she actually

used that in the text of her book I would have to check before I could answer that question.

Q. As you have found the term "imperfect competition," as you have defined it here, used in economic literature and the term "monopolistic competition" used in economic literature, are there any marked differences between the meanings of the two terms?

A. It is difficult to answer that question categorically because some try to establish a difference. Others insist that the two are interchangeable. It is one of those questions which, I think, just can't be answered categorically. Depends upon the emphasis that certain authors try to give. It is very common to use it interchangeably.

6083 Q. Well, is it accurate, then, to say that the term "monopolistic competition," as used in economic literature, does not necessarily mean anything different than "imperfect competition," as you have defined that term to us?

A. Well, as I have already stated, the two terms are used interchangeably by many people.

Q. Well, then, necessarily the answer to my question would be "yes"; would it not?

A. Yes, I think that—

Q. Yes. When here in testifying you have used either the term "imperfect competition" or the term "monopolistic competition," or have responded to questions by Mr. MacIntyre in which those terms were used, have you considered those terms to be used in any other meaning than those that you have just now told me about?

Mr. MacIntyre: Now, I object to that. It has been used in so many places in the record that I contend that—that is, these terms have been used in so many places in the record that I contend that when counsel put a question of this kind to the witness that they should point out those places where it has application, the question there, and to which the answer could have application. The Respondents two weeks ago objected to such questions regularly.

Mr. Stewart: And were overruled.

Mr. MacIntyre: I think the record shows other-

6084 wise than that, Mr. Stewart.

Trial Examiner Norwood: Well, I am going to let the Doctor answer that, if he says he can.

Objection overruled.

The Witness: Now, let us have it repeated, will you please?

Trial Examiner Norwood: Read it.

(Question read.)

A. Well, without having a—having had an opportunity to review the record and thus determine exactly how I used those terms or whether I used them interchangeably, I am not in a position, I think, to answer that question.

By Mr. Robison:

Q. Well, from your recollection of what you have testified to here, and having in mind what you intended to testify to, would you say that in any part of your testimony you have used the term "imperfect competition" in what you would consider a reprehensible sense?

A. I don't think I so used the term, but there again I haven't had a chance to review—

Q. Have you used the term—have you used the term—

Mr. MacIntyre: Let the witness answer, please.

Mr. Robison: I thought he had completed his answer.

Trial Examiner Norwood: No, he had not.

6085 A. (Continuing.) I wanted to add, but there again I have had no opportunity to review the record.

By Mr. Robison:

Q. Yes. Well, do you recall any place in your testimony where you have used the term "monopolistic competition" in a reprehensible sense?

A. I don't recall any place in my testimony where I dwelt upon the question of reprehensibility. I certainly didn't intend to pass judgments on the—upon these matters in terms of whether or not they were reprehensible. I don't recall any such instance where I passed such a judgment.

Q. Well, then, are we to understand this, Professor Gray: That wherever you have said that a practice, in your opinion, was not in accordance with competitive economy that you have not intended to indicate anything reprehensible concerning the practice that you so referred to?

Mr. MacIntyre: Now, I object to that unless the place where it was used is pointed out, so the witness is in a position to know in what instance the question applies.

Mr. Robison: Mr. Examiner, it was the witness himself who disclaimed any—

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Read the question.

(Question read.)

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6086 Trial Examiner Norwood: Can you answer that question?

A. When I stated that—

Trial Examiner Norwood: Objection overruled.

A. —such and such a situation was not in accordance with competition, I was expressing an economic judgment there and not a value judgment as to whether or not that was reprehensible.

Trial Examiner Norwood: Do you mean by that that you were not considering the moral aspects of it; is that the idea?

The Witness: Yes; that is correct.

Trial Examiner Norwood: And you mean by "reprehensible" something which is morally undesirable or, I assume, a moral infraction? Is that right?

Mr. Robison: It might include questions of morals, yes. It might include questions of psychology. I meant it to indicate something that Dr. Gray would object to.

Trial Examiner Norwood: Five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. Robison:

Q. Dr. Gray, will you tell me how you define the field of economics and tell me what is dealt with in that field?

A. (Laughter.) That is a very broad question. I
6087 will try to be just as brief as I can.

I should say that the scope of economics covers all of those activities of men that are involved in the producing and distribution of useful products. It involves all the activities of men in their efforts to make and distribute those useful commodities that are necessary for man's material existence.

Q. Do you consider the field of economics to be a science or a philosophy? Or where would you class it?

A. Well, that is a moot question in the field. I should prefer not to engage in any discourse on that subject, but we do speak of it as a science in a general way.

Q. Would you mind telling me what your view, your own view, on the subject is, as to whether you consider it a science?

A. I consider it a science in a—in a very general sense.

Q. Just what do you mean by that?

A. I am referring there to the method and approach that a man takes. A scientific method, I think, can be used

in economics in the same way as in other fields, and if one approaches his subject from the scientific point of view, trying to find the truth, trying to analyze the situations in an objective frame of mind, it seems to me, then, he can say that it is a science, even though it can never perhaps be as exact as the physical sciences.

Q. It is true, is it not, that the process of develop-
6088 ment in the physical sciences is, first, the develop-
ment of theories, and then by further experience and observation and proof developing those theories into a conclusion or a law?

Mr. MacIntyre: I object to the question. We have not been concerned here with the physical sciences. We are getting into other fields now.

Trial Examiner Norwood: Objection overruled. Counsel can test this witness' expertness to a reasonable extent.

Go ahead.

A. Yes, I think you have stated it in a general way correctly, that the physical scientist does start with a hypothesis and then he proceeds to experiment and make all sorts of tests and verify them. It may turn out to be false; it may prove to be true; then he moves on to something else.

By Mr. Robison:

Q. Now, in the field of economics you also start with theories; do you not?

A. Oh, I think so.

Q. And isn't it true that in that field those theories and the nature of things are for the most part incapable of exact demonstration?

A. Not exactly. They are—one starts out with a sort of a working hypothesis, then one proceeds to check their analyzed tests. It may turn out that that hypothesis was
correct; it may turn out that it was quite erroneous.
6089 If it is erroneous you abandon it, go to something
else. If it proves to be correct, you set up another hypothesis, and then on that way. One is not bound by what one starts out with if one really goes at it objectively.

Q. Well, that is true in any science, is it not?

A. Yes.

Q. Yes. What I am asking is whether or not it is not

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for the most part characteristic of the theories and hypotheses developed by an economist that they are not in the nature of things capable of exact demonstration?

A. To an extent that is true, because of the human element, which is not a fixed quantity, and to that extent economics are at a serious disadvantage in comparison with the physical sciences.

Q. Well, now, do you consider that the field of economics deals with questions of how business is done or with questions of how business should be done?

A. It deals with both, really. It deals with both of those questions. One has to investigate in order to find out how business is done, and one then has to examine the end results or consequences of certain forms of economic behavior to come to some decision as to whether those economic consequences are the same or different from what would be expected from another line of behavior. So there is something of both in our 6090 problem there.

Q. Well, what do you start with for the purpose of determining—or, I will say, formulating judgment as an economist, as to how business should be done? What is your starting point?

A. I think most economists start with the assumption that competition is a desirable form of business organization and operation in the sense that they believe, based on experience, that that yields desirable end results. Then they investigate situations and measure them as against this—this working hypothesis of competition.

Q. Well, in order to be prepared to make such an analysis, or in the course of making such an analysis, do you delve into the history of how business has been done in the past? Is that any element in your field of economics?

Mr. MacIntyre: I submit that question has just been answered.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

A. Yes, it is. There is a very large body of economic literature which we call economic history, enormous literature, that delves into the history of all sorts of business activities.

By Mr. Robison:

Q. Well, is that historical background the primary
6091 background for the judgments and analyses made by economists?

A. It is difficult to answer that categorically. Some economists approach their subjects almost entirely from the historical point of view. Others approach it largely from a—from what we call a deductive point of view, that is, starting out with hypotheses and then testing those. In practice, I think you would find most of them doing it both ways; that is, taking—using both methods.

Q. Which method of approach do you use?

A. Personally, I think I am pretty largely devoted to the historical method. That has been my general approach, I should say, but that doesn't mean to imply, of course, you neglect the other side of it.

Q. Well, in applying the historical approach to economic problems, is there any thought that what men have done in the past in the conduct of business they should continue in the present and the future?

A. No. I think there is no such implication because we know from experience and—over a long period of time that practices are continually changing, and what has been done in the past will no longer be done, and there is a constant process of change in the methods of doing business.

Q. And do the theories and principles of economics change in keeping with changing conditions in a changing world?

A. Yes, I should say they—they do.

6092 Q. Well, does it follow, then, that what the theories and principles of economics consist of at any given time rests in the judgment and view of particular economists?

A. Well, if I understand what you are getting at there in your question, I should answer "yes," that at particular times economists hold general views, and those views change over a period of time. You find that evolutionary change in the field of economics.

Q. Well, is it fair to say that the views of all economists concerning that subject of what are the existing principles and theories of economics would not all change in the same way at the same time?

A. Oh, yes, I think that is quite obvious, that you would have—

Q. It is quite characteristic of the science of economics; isn't it?

A. And of all other sciences. They are all in the same boat in that respect, even the law.

Q. At the University of Illinois where you hold your chair, do you have a professor of marketing?

A. Yes, there is a gentleman there who holds that title.

Q. And what is his name?

A. Paul D. Converse.

Q. Does he devote his studies and his research work and his teaching more specifically to the subject of
6093 marketing than you do?

Mr. MacIntyre: I object as to what degree that somebody else devotes their work in a particular direction. The question is not relevant and material here. We can ask this man what he does.

Trial Examiner Norwood: I think you are entirely off the reservation.

Mr. Robison: Well, I won't press that particular question.

Trial Examiner Norwood: That is no test of what this economist knows.

Objection sustained.

Go ahead.

By Mr. Robison:

Q. In your work and that of Mr. Converse at the University, do you complement each other—I am not trying to be facetious—I mean, is one the complement of the other?

Mr. MacIntyre: I object to that. Let us find out to what extent this man does anything in a particular direction, so long as it is material and relevant, but as to whether the work of someone else compares with his is irrelevant and immaterial.

Trial Examiner Norwood: I think that he is now going to the nature of this witness' expertness.

Objection overruled.

6094 The Witness: Shall I answer?

Trial Examiner Norwood: Yes.

A. Professor Converse and I are in different departments, and our work is quite different. I am not intimately acquainted with what problems he deals with there, and I couldn't answer as to the nature of his work.

By Mr. Robison:

Q. Is he connected with the graduate school at the University?

A. Yes. Yes, he gives some graduate courses in marketing, and he directs theses of students in that field.

Q. Do you consider that you have given as much study and engaged in as much research in the field of marketing as he has?

Mr. MacIntyre: I object to that question. Let us find out to what degree this man has engaged in research and not—

Trial Examiner Norwood: Objection sustained.

By Mr. Robison:

Q. Speaking very frankly, Dr. Gray, will you tell us whether or not you consider yourself an expert in the field of marketing?

A. I don't claim to be an expert in the specialized field of marketing. My field is economics, and in that connection we give some attention to marketing practices and
6095 procedures as they affect our general study of economics, but in most universities where you have this intense degree of specialization you have a separate or special professor of marketing who devotes his efforts exclusively to that.

Trial Examiner Norwood: Well, did you say in that statement that your course included studies of marketing and the economic principles applicable thereto?

The Witness: I said we give attention to the problem.

Trial Examiner Norwood: Well, did you make a study of those matters?

The Witness: Oh, yes, I have made a study of those in connection with my general work in economics.

By Mr. Robison:

Q. Will you point out to us in the statement of your qualifications where you made any reference to the field of marketing, Dr. Gray (handing statement of qualifications to the witness)?

A. My reference here to work in general economics would cover some consideration of marketing, but, as I have indicated, not in the specialized sense in which it is dealt with in specialized courses in marketing.

Q. Does the economist who specializes in the field of marketing deal more closely and more extensively with

the questions of how business is done than the
6096 economist who deals merely with the general field of economics?

Mr. MacIntyre: I object to the question. We can find out what this man does, compare that with what others have done when the others are here.

Trial Examiner Norwood: Objection overruled.

A. Well, I should say the specialized professor of marketing digs into his special subject and, of course, more intensively than a general economist, but that is his specialty.

By Mr. Robison:

Q. Yes, and that doesn't quite answer my question. I asked whether he deals with the study and research and investigation as to how business is done more than the economist who is engaged in what you call the general field of economics?

A. I can answer there only in a qualified sense, that he gives greater attention, of course, to the marketing operation, but not to the broad problem of how business is done. I would rather put it that way. He gives specialized attention to the marketing, one aspect of the total economic activity.

Trial Examiner Norwood: Does he deal more with the practical details of marketing?

The Witness: I think that is a fair characterization, although it is not for me to pass judgment on their work.

By Mr. Robison:

6097 Q. In the early part of your testimony yesterday, Dr. Gray, you made the statement that a manufacturer selling in a true economic market could not sell beyond the limits of his immediate market area. Do I quote you substantially correct to that effect?

A. Yes, I think that is the general proposition that we were concerned with there.

Q. Will you tell me just why you consider that such a manufacturer could not sell beyond that area?

A. As I tried to point out, starting from his mill—his place of production, which I defined as a market, and moving outward from that point, his—the goods must bear his added cost of freight as they move out from the center to the various destinations, and because of the increasing

cost of the freight there as the distance increases he will soon come into competition with goods moving from other centers toward him. That, as I tried to explain, was the place at where you get goods—this geographic margin or boundary between two adjacent markets. Each of them operates under the disadvantage that as they move farther away from their place of production they incur this added cost of moving their goods, so that that was the reason that neither one under that system could go very far into the territory of the other, because he would be at a disadvantage on account of the added freight cost.

As he moved closer to the other fellow's area of local
6098 advantage, he would be—his goods would be burdened with his added freight cost, while the other fellow would be shipping a shorter distance and having an advantage.

Now, that—that boundary area, as I think I pointed out, was a rather indeterminate area. It is not an exact line. It is a thing that shifts backwards and forwards with the forces of competition. One fellow can reduce his costs; that means he can extend farther out because his costs are lower than the other, so that margin tends to move as changing conditions in those two areas—with changing conditions, that should be.

Q. Well, do you mean to say that a manufacturer can never sell advantageously against another manufacturer who has a lower transportation cost to a given point of delivery?

A. That was the substance of my view there, that if—if competition prevails he simply couldn't go beyond this area in which he has an advantage because if he did he could claim the other fellow's gain; the other fellow would have an advantage over him and could undersell him.

Q. Suppose the other fellow's cost of production is so much higher than the first man's that the first man can sell right up to the location of the second man's mill—

A. If—if—

Q. —even at the second man's—the amount of the second man's cost and still make a profit on the trans-
6099 action. Would you say in that case that the first man cannot sell in the territory of the second man?

A. The essential thing is there that the territory of this man is extremely limited by virtue of his high cost. He is a high cost producer. That means he can't sell very

far out. The other man, the first one, being a low-cost producer, could—could move towards the second man's place of production, and if the difference were sufficient he could move clear through and take him out and put him out of business. This second is—is a high cost producer, under your assumption, and his market area would be limited because of his relatively high cost of production. The first man could extend his area—his area out farther than the second man could because he has the—the lower cost of production there.

Q. Now, I think you said that where two such areas meet you would expect competition to be particularly keen. Did you not say that?

A. Yes, I think that, and the reason for my statement was that each of these manufacturers is endeavoring to extend the area of his operations and—each of them are doing that, so you have that rivalry there, and they try to do it under a competitive theory by reducing cost of production, because if one can do that and the other can't, then he can extend his area at the expense of the
6100 contraction of the other fellow's area who doesn't manage to reduce his cost. That is the general theory.

Q. That is, he can do that by reducing his selling price?

A. Yes. Yes; that is, all along the line, that is, using selling price in the sense of the price at his place of production.

Q. Well, now, as the place of sales moves back from that marginal line—I think you used that term, did you not?

A. Marginal or boundary line.

Q. Yes.

—as the place of sale moves back from that line toward the place of production, would you expect that competition would become less keen than at the marginal line?

Mr. MacIntyre: May we have that question read, please?

The Witness: Let us have it again.

Trial Examiner Norwood: Read it.

The Witness: I think I didn't quite get it.

(Question read.)

A. No. Now, I think what you have there would be a shift of your boundary. One fellow, by reason of his lower cost, can push his boundary—his area outward toward the other fellow and take over certain business in

that disputed border territory, but the—that wouldn't affect the state of competition, it seems to me, inside of the areas themselves.

6101 By Mr. Robison:

Q. I think you have entirely—

A. He can push the boundary.

Q. I think you have entirely misunderstood my question, Dr. Gray. I was assuming, in line with what I had understood you had said, that for the moment there is a fixed—substantially fixed marginal line between the area of producer A and the area of producer B.

A. Yes.

Q. Now, and you have said that at that line you would expect competition to be particularly keen.

Mr. MacIntyre: I object to that. The witness has not stated that he would expect competition to be keen at any fixed line. We were talking about a different line from that. I object to characterizing the witness' testimony in that direction, because it is not in accord with the facts.

Mr. Robison: I understand the witness has already agreed with me in what I have asked, Mr. Examiner.

Mr. MacIntyre: Refer to the record on that.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Did you say that?

The Witness: Well, I think I said at that boundary area or border.

By Mr. Robison:

6102 Q. Yes. All right. Then, at the border area which—

Trial Examiner Norwood: Objection was overruled, then.

Q. —which is marked by that marginal line, you have said that you would expect competition to be very keen; is that correct?

Trial Examiner Norwood: Answer orally, Doctor.

A. Yes.

Q. Well, now, as the place of sale moves back from that marginal area toward the place of production, would you expect competition to become less keen, or would you say that there was no competition outside of that marginal area?

A. Well, you would have—your whole situation there is competitive in the sense that these two producers are trying to push against each other, so to speak. Now, in—I understand your question to be at a point somewhere back from the border.

Q. Yes.

A. Well, the people at that point would enjoy the—that is, under a competitive system, would enjoy the benefits of this competitive rivalry between these two groups because that would be thrown back and have its effect on the—the basic price at the mill, because that would be the only way that these two rivals could really push each other back; so if in an effort to do that they would have to get their cost of production down, then if that were the
6103 uniform price the people inside of the area, that is to say, half way between the point of production and this boundary, would enjoy the benefit of that. That was my—

Q. That does not quite answer the question I asked you. Under those circumstances do you consider that there would be competition in selling a commodity at that intermediate point midway between the point of production and the boundary area?

A. Yes. Yes, I think so, because those intermediate points, as I have explained, being a part of the market, would participate from whatever advantages came about from this—this reduction of cost.

Q. Well, then, does it follow from that answer that it is not necessary to have more than one seller of a commodity in a given area in order to have competition in selling there?

A. No, I don't think it follows at all. You could have these two.

Q. Well, of what—

A. Pardon me.

Q. You have told us about the effect of competition at this intermediate point, but of what does the competition at that point consist, under the assumptions that—

A. Yes.

Q. —that we have made here?

A. Well, the competition consists of these—these activities in these two markets that we are talking about,
6104 and the pressure on market A and market B to get their cost down so as to be able to extend the scope

of their operations. And that is what we mean by "competition" in this situation. And the—any benefits in the form of lower costs that result from such competition would be diffused over the whole area.

Q. Well, in order to make my question clear, assume that the cost of production at the mill of producer A, to whom we have referred, is the same as the cost of production at the mill of producer B, and that freight rates between them are on the same general basis. Then this marginal line that you have referred to would be midway freightwise between the two mills; would it not?

A. Yes, sir.

Q. And would you consider that there would be an area which would extend for some distance on either side of that point of equivalent freights?

A. There might be a border strip there, if I may use the term, where the—it was an area of swaying competition, you might say, a sort of an indeterminate zone. It could never be very broad, but it is the zone in which these people—these two producers are actively seeking business. It couldn't be a line in a practical sense. It would be a narrow strip of territory.

Q. Narrow strip. And there they would both be trying to sell, in your conception?

6105 A. Yes.

Trial Examiner Norwood: Well, would the breadth of that strip be determined by some economic conditions that you could point out to us?

The Witness: Yes, we have assumed here that the cost was equal and the freights were equal, and this zone would fall somewhere midway between the—

Trial Examiner Norwood: Well, would the price and the demand in these two localities and the surplus production of one or the other have anything to do with that zone?

The Witness: Well, we assumed that to start with, as I understood our discussion here, that all these things were assumed in the starting assumption, that the cost of production was the same.

Trial Examiner Norwood: Well, the ratio of freight to price, freight to cost, would all that have something to do with the width of that zone?

The Witness: Yes, but there again, I think, we in our discussion were assuming that those things were fixed for the time being.

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By Mr. Robison:

Q. Now, still sticking to the same assumptions of equal cost of production on the part of producers A and B and freight rates on the same general basis, could producer A —strike that, please.

6106 Could producer B sell in this marginal zone on A's side of the point of equal freight rates without reducing his mill net return?

A. I am not quite clear what you mean there by "on a side of the point."

Trial Examiner Norwood: Read it.

Q. I said on the side of A, is what I mean.

A. Oh, pardon me. No. No, under the assumptions he couldn't invade A's territory, if I may use that expression, without incurring an added freight cost, and if he did that it would put him at a disadvantage with respect to A. His price, which started out the same, plus the higher freight that he had, that is a burden on his goods, would price his goods, then, at this marginal zone at a point a little above A's. A can undersell him.

Q. So you would say that it would be impossible for B to sell under those circumstances, starting with equal cost of production on the part of A and B—

A. Yes.

Q. —and impossible for B to sell at any point on A's side of the point or line of equal freight rates; would you?

A. Yes.

Q. And would it not be equally true that it would be impossible for A under those circumstances to sell any place on B's side of that line of equal freight rates?

6107 A. No; A couldn't do any more than B. They are both in the same boat. That is, B can't—as we said, B couldn't come over into A's—the territory where A has his place, and A couldn't go over into his. They are both on the same footing there.

Trial Examiner Norwood: Are you assuming there that neither side could reduce his mill net?

The Witness: Well, no. We started out with the assumption that the—that the cost of production was the same at the two points. Now, if you want to change the assumption, of course, that will change your whole picture, but we are trying to stick to that.

Trial Examiner Norwood: Aren't you assuming that neither side could reduce his mill net, the net that he re-

ceived out of the price, and absorb some freight and ship over into the other side?

The Witness: Well, that practice was ruled out by our starting assumption here.

Trial Examiner Norwood: That is what I am asking you.

By Mr. Robison:

Q. The only assumption in that respect that I asked you to make, Dr. Gray, was that cost of production was the same at the points of A and B.

A. Well, I have been answering in terms of the competitive market price in market B. That would reflect their basic cost, and that would—their basic cost would determine what they could and couldn't do. I thought we were clear on that.

6108

Q. I think perhaps I can iron out some misunderstandings between us if I ask you whether, in your philosophy of economics, there is any place for profit in the sale of goods.

A. Oh, yes. Oh, yes; the competitive theory which I have outlined here makes due allowance for—for profit.

Q. Well, how do you define profit?

A. Well, in competitive economics we say that over a period of time the profits will—will be limited, or will be reduced to the so-called return on capital; that is, where they have got to yield men enough in order to induce them to put their capital into business.

Q. Well, it seems to me you have told me some characteristics of profits from an economic point of view, but I don't think you have given me a definition of "profits." How do you define "profits"?

A. Well, I should say a profit is the return that one gets from the conduct of a business over and above the cost—or the necessary cost, let us say, of conducting that business. Now, on a competitive theory he will have to continue to get that return, otherwise he wouldn't stay in business. It doesn't mean one producer will continue. He might be eliminated, but the whole system operates under it.

6109

Q. In other words, you recognize that business in an industry must be done at a profit if the industry is to continue to operate? Am I—

A. Oh, yes, I think that is one of the general essentials of the type of economic theory that I outlined here.

Q. Well, is it a part of your theory that profits from

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the sale of goods can never be more than what you have referred to as return on the invested capital?

A. Over a long period—

Mr. MacIntyre: May I hear the question?

A. —They might, temporarily. We recognize in a rapidly changing condition we get a situation where for a short time there will be very high profits, but over a period under competition, other producers will come into that field and increase production, and prices will go down, and those profits will tend to be—to equalize or be brought down to this level where those people, the enterprisers who put capital into business, feel that here is the minimum amount, now, that they have to have in order to stay in business.

Q. Now, in saying that, is it not true that you have been stating what you as an economist, and perhaps other economists, consider that business should do?

A. No, I think we have been—I have been stating here what I think would happen if you had a freely competitive system.

Q. And just what do you mean by "a freely competitive system"?

6110 A. Well, going back to my definition of—of "effective competition," I should say that a system in which you have enough of this—or a sufficient amount of active rivalry of buyers and sellers, for practical purposes we would say that is a competitive system. There again, you see, it is a question of degree. You have got to have enough to make this system work competitively. Now, that is the sense in which I have been—

Q. Which statement is largely begging the question, is it not, Dr. Gray?

A. Well, it is our difficulty there, see, of a degree. And every time you introduce an adjective like "effective" that denotes a degree, something, of course, that is less than perfect but still it works. The economist can't escape from those things. There is no use to try. We don't try.

6111 Q. Now, I think we diverged from the subject that we were on, and I am referring again to these manufacturers A and B, who have equal costs of production, and to the marginal line which is at the mid point freightwise between their two points of production.

Now, when producer A sells at a point which is midway between his point of production and that marginal point, would you say that there is any competition in that sale—

A. Yes.

Q. —in his selling at that intermediate market?

A. Yes. Under the type of thing we are talking about here, that condition which you are asking about is reflected in the price at the point of production, which we are assuming covers the costs, so that the parties in this intermediate area which is between the point of production and the marginal point gets the benefit of the competition, which is all focussed at this point.

That was my basic conception of market, as the place where supply and demand are focussed.

Q. Well, when A sells at that intermediate point, who are the competitors engaged in that market?

A. This fellow B over there, who is pushing him.

Q. Even though he is not attempting to sell in that market at the intermediate point?

A. A is under the pressure, nevertheless, from B,
6112 who is pushing him to hold his business, to hold this so-called natural territory. The only way he can do it is to get his costs down and keep them down to at least as equal as B's, or attempt to get them lower. And since that competition is focussed there in his market, that uniform price there is, of course, a benefit to everyone who buys in that market.

Q. Well, I understood you to say on your direct examination that in order that there might be a competitive market sellers must have an alternative choice—excuse me—buyers must have an alternative choice of sellers. Is that right?

A. Yes; I said that.

Q. Well, in what does the alternative choice of sellers consist for the buyers at this intermediate point that we have referred to?

A. Which is in A's natural advantage territory.

Q. Yes.

A. Well, under our assumptions there, the buyer at this intermediate point would not have any choice as among other sellers, because we are assuming there are only two, but he would be able to benefit from this competitive pressure which is reflected here in the market.

You see, we started out by assuming there are just two buyers, and the fellow here at the intermediate point could not buy from B because B is too far away. He has got to buy from A. We have eliminated that element of
6113 choice among several sellers. But this competition is focussed at the market. He gets the benefit of it.

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Q. You said the competition is focussed at the market?

A. Yes. Yes.

Q. And when seller A sells at this intermediate point, that I refer to as point O, where under those circumstances do you consider the market to exist?

A. I consider that we have two markets here. We started out with that assumption, market A and market B.

Q. You understand when I referred to the terms "market A" and "market B", I referred to the point of production—

A. Point of production.

Q. —A being the producer and B being another producer.

Now, I ask you when A sells at the point that I have referred to as O, where do you consider the market to be?

Mr. MacIntyre: I object to the question. It does not correctly quote the witness, because the witness has not said that the sale is made at any particular point. That has not been covered in testimony up to this time. So let us find out what the witness says as to that.

Mr. Robison: It is clearly covered in my question.

Trial Examiner Norwood: Read the question.

(Question read.)

6114 The Witness: At A.

Trial Examiner Norwood: Objection overruled. Answer the question.

The Witness: Pardon me.

Trial Examiner Norwood: Answer the question.

A. The market is at A. The other market is at B. That is the way I have used the term all the way through here.

Trial Examiner Norwood: I think we might as well recess for lunch.

Recess till 1:30.

(Whereupon, at 12:10 o'clock p. m., a recess was taken until 1:30 o'clock p. m. of the same day.)

6115 Afternoon Session.

HORACE M. GRAY resumed the stand and testified further as follows:

Trial Examiner Norwood: Proceed.

Cross-Examination by Mr. Robison (Resumed).

Q. Dr. Gray, before the noon adjournment we were talking about this matter of selling from the location of A and the location of B, and selling by A at the point O. Do you recall that?

A. Yes.

Q. And I had asked you and I think you had said that in that situation you would consider the market to be at the place of production of A. Is that correct?

A. Yes.

Q. Why do you say that? Why do you say that you think the market would be at that point?

A. Because, in line with my theoretical development here, that is the place at which these forces of supply and demand converge. That is the reason we use that concept of a market.

Q. Suppose that A conducted his selling in this area, that I think we have referred to as his own area, through traveling salesmen, and that his only contact with purchasers of his product at the point O was through
6116 traveling salesmen, but he does not, however, maintain a stock of his commodity at the point O, but ships it from his place of production. Would you still say that the market was at A's point of production?

A. Yes, sir; I still say that.

Q. Then, in your conception of a market it does not make any difference whether it is the point where buyers and sellers meet or not?

A. Oh, yes. My whole theory is predicated on the assumption that buyers and sellers do meet.

Q. Well, in this situation that I have last outlined, where the buyers are at O, remain at O, and their only contact with A is through salesmen who come to O and deal with him, where then would you say that the buyers and sellers meet?

A. Well, as I pointed out, they do not necessarily have

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to meet in person, or meet in the physical sense. They are a part of that market in the sense they are aware of what is going on there, and their demands are focussed on that particular market, even though they themselves may not be there physically. Their market effectiveness is focussed at that point, even though there may be salesmen, as you suggest.

Q. Well, in what sense do you conceive, if at all, that the buyers and sellers meet at the point of production of A under the circumstances that I have just outlined?

A. When I say the demands of these buyers are
6117 focussed at that point, that means the buyers themselves, as individual persons, need not be there.

Q. What, in your opinion, would be necessary by way of change in the situation that we have now outlined in order to make O a market for the commodity produced by A?

A. Well, in line with the assumption that we are operating on here, I should say that if O became a point of production, that is, some new producer came into the area and located—O. pardon me. That should be O— and located at this point O, then the people in that immediate vicinity would resort to point O to get their supplies. If the new man at O could produce more cheaply than the producer at point A, people in that immediate vicinity would derive their supplies from him. So you have a new point there at which the demand and supply focussed.

Q. Well, now, leaving out of consideration those new elements and going back to the original situation, is it accurate to say that you conceive of a market as the place where buyers and sellers meet, using those terms only in an economic sense and not at all in a physical sense?

A. Yes. Well, I think the whole point of my discussion has been in the economic sense. I conceive they do not have to meet in the physical sense.

Q. You conceive, then, of the place where buyers and sellers meet as the place where the buyers make their
6118 influence felt in the matter of demand?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Well, now, you were asked by Mr. MacIntyre about a situation that he outlined concerning the City of Philadelphia and another situation that he outlined regarding the City of Washington, and, as I recall it, your answer to

his question was that you would not consider them separate markets. Do you recall that?

A. Yes. I think that statement of mine was based on the assumptions that he stated, as I remember, that these two cities were operating under a basing-point system, as I remember his assumptions.

Am I correct?

Mr. Gilpatric: That is right.

Mr. Robison: At any rate, conduit was being sold in those two cities at delivered prices. I do not recall whether it was under the basing-point system or not.

Mr. MacIntyre: I think if you are going to put the situation to the witness with respect to the answer that he should know what the situation is, the exact one that he answered, if you now want to call into play his answer.

By Mr. Robison:

Q. Do you recall the question that was asked of
6119 you which involved Philadelphia and Washington and the answer that you made?

A. I do not recall the exact wording of that question. I recall the discussion about the two situations.

Q. Do you recall that it involved the assumption that demand was decreasing in Philadelphia—

A. Yes.

Q. —and at the same time demand was increasing in Washington, and that there was no decrease in price, delivered price, at Philadelphia. Do you recall that?

A. Yes.

Q. And I ask you again, do you recall that you said under those circumstances you would not consider those two places, Philadelphia and Washington, as separate markets?

A. I think that is what I said.

Q. And I think the reason you gave for it, or perhaps the principal reason you indicated for it was that the price of conduit was not declining in Philadelphia, although on the assumptions presented to you the demand was declining there.

6121 Q. In order to remove any doubt, Dr. Gray, I will ask you to read that question in that connection that was asked of you, and which appears at page 5994 of the record (handing record to the witness).

A. Thank you.

Did you want me to read it out loud?

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Q. Oh, no. Just familiarize yourself with it.

A. (After examining record.) Yes.

Q. Now, as I understood your answer, to the effect that you would not consider them separate markets, it was based, in large part at least, on the fact that you considered that the price had not declined in Philadelphia. Is that right?

A. Yes.

Q. Well, that seems to imply that you would have expected the price to decline in Philadelphia. Will you tell me why you would have so expected?

A. Had Philadelphia been a true market, had the demand fallen off as indicated, then that falling off of demand should have been reflected in the decline of the price. That is almost axiomatic in competitive theory. Falling off of demand would immediately bring a reduction in price.

Q. Well, you do not mean to say as an economist, Dr. Gray, do you, that price would be governed solely by
6122 demand without reference to the conditions of supply?

A. Under the assumed conditions there was no supply at Philadelphia; and, of course, that is simply a further reason why I regard Philadelphia in that instance as not a true market.

Q. Well, do you find in the assumed conditions the fact that there was no supply at Philadelphia?

A. (Referring to record.) It says, "Assume that while the basing-point practice was in force." There is nothing in that statement, unless it is contained in that hypothesis No. 1 that is referred to there. I can't recall that.

Q. Well, you recall the hypothesis No. 1 does not make reference to conditions at any particular point, do you not?

A. I couldn't remember all the things set out.

Q. Well, the fact is, is it not, Dr. Gray, that on the assumptions that were presented to you in that question you could not—on those assumptions alone you could not determine whether you would expect the price of conduit in Philadelphia to decline or not?

A. Well, under the assumption that it was a competitive market, one would assume the price would decline. Now, if that were not that kind of market, of course, I would not expect it.

Q. Well, suppose that for some reason, which had no ulterior or illegal cause, that the supply in Philadel-
6123 phia declined at a rate corresponding with the decline in demand—

Mr. MacIntyre: I object to that.
Mr. Stewart: Let him finish the question.
Trial Examiner Norwood: Wait a minute.

By Mr. Robison:

Q. (Continuing.) —if that were included in the assumption, you could not say that you would expect the decline in price in Philadelphia, could you?

Mr. MacIntyre: I object to the question because it adds an assumption there that was not included in the original assumption, and one that is directly contrary to the record, and that was the reason it was not included in the original assumption.

Trial Examiner Norwood: It is a matter of theory.

Mr. Austin: If Your Honor please, is it necessary on cross-examination to stick to the record, or is it necessary on cross-examination to assume what Mr. MacIntyre assumed on direct? If it is, it is new to me.

Trial Examiner Norwood: I think not.

Objection overruled.

Mr. Robison: We better have the question read.

Trial Examiner Norwood: Read the question.

(Question read.)

A. I should say in response to that question that if the supply declined at an equal rate with the decline in demand, in a free and open competitive situation, that there
6124 would be no change in the price. You have the same relationship there in supply unless demand offsets it.

By Mr. Robison:

Q. Well, in the absence of anything in the assumed state of facts concerning the state of supply at Philadelphia, how could you reach and express the opinion that Philadelphia and Washington under the assumed facts would not be different markets?

A. Because, as I understood the basic assumption, the selling is taking place in those markets at delivered prices, which did not reflect the supply conditions in there, so I had to answer the question on that assumption and confine my remarks to the demand side of the equation.

Q. Well, you based your answer on an assumption which was not included in the facts which you were asked to assume, isn't that correct?

Mr. MacIntyre: Now, I object to that.

Trial Examiner Norwood: Objection overruled. Let him explain that.

A. No, I did not.

By Mr. Robison:

Q. Your answer is "no"?

A. No.

Trial Examiner Norwood: You are assuming a common source of supply there?

6125 The Witness: I was assuming just what is stated here, that the product would be sold in Philadelphia under the delivered price system.

Trial Examiner Norwood: Go ahead.

By Mr. Robison:

Q. Well, I ask you again, where in the facts that you were asked to assume do you find anything bearing on the state of supply at that time in Philadelphia?

A. Well, in so far as the supply situation is something back behind the delivered price system, there is no specific statement about the supply condition.

Q. Well, then, I ask you again whether it is not true that in answering the question you were assuming something which was not stated in the facts which you were asked to assume.

A. No, I think not. I think I addressed my reply to the assumption of the delivered price and the failure of that price to reflect a changed demand situation.

Q. Without having any knowledge regarding any change in the state of supply at the same time in Philadelphia?

A. Well, no. That goes back to my fundamental contention all the way through my discussion that the delivered price system tends to separate and isolate these different destinations, so that your basic concept of a competitive market is dispersed, is disintegrated. That was the burden of my testimony, and that lies behind the basic
6126 assumption there, under the delivered price system.

Q. Well, do you mean by that that under a delivered price system in your conception there is no market for the product?

A. I think I testified that under that system the market, as we conceive of it in competitive theory, is destroyed or dispersed.

Q. So your answer to my question would be "yes"; would it?

A. Assume that there was no market? That was the question?

Q. No. I asked you whether you consider that under a delivered price system of selling there is no market.

Mr. MacIntyre: Now, may we have the specification as to what delivered price system is being spoken of?

Trial Examiner Norwood: The Doctor may answer that "yes" or "no."

A. I just stated that under the delivered price system, as I see it, the market, in the sense that an economist uses that term, is dispersed.

Trial Examiner Norwood: Does it exist or not exist?

The Witness: It does not exist in the sense that I have been using the term.

Trial Examiner Norwood: Go ahead.

By Mr. Robison:

Q. Now, I want to go back again to the assumptions we have made about A's location and B's location 6127 and the point O in between.

I think you said that under the facts assumed you would consider that there was competition at the point O.

A. No. I think I stated that the competition would be focussed on point A, the point of production, and that the buyers residing at point O, being a part of that market, would get the benefit of such competition.

Q. Well, on the assumptions presented in that connection there is only one seller at O, is there not?

A. At A.

Q. At A.

A. Yes.

Q. One seller at A.

A. One seller.

Q. And do you say that in your conception of competition competition would exist at A notwithstanding there is only one seller there?

A. Yes. Yes. As I stated, the competitive pressure of the adjacent market, which we located at B, would put pressure upon A to expand his area of operations, and that all parties in the area then, under a competitive situation, would benefit from that. It is the competition of the adjacent market areas.

Q. So that there may be competition in a market even though there is only one seller there, in your opinion?

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6128 A. Yes, if there are adjacent producers who keep him under pressure.

Q. Now, when you talk about competitive pressure on the part of B as affecting A, does that assume that A is charging a uniform mill net price throughout what you have referred to as A's territory?

A. Yes. I understood from the assumption that the price at point A and point B was at the market, and that the price was demand at the two points, and that the prices were equal.

Q. Suppose A was not following the practice of selling throughout that territory at a uniform price at his point of production, would you say that in your conception and opinion that would not be a competitive method of selling?

A. I should say that would not be competitive if within his own area, where he has an advantage, he charges one buyer one price and another buyer some lower price.

Q. And you mean that it is entirely consistent with economic theory for him to do so?

A. No. As I have pointed out many times, it would be inconsistent with competitive theory. It would be indicative of some type of control that he might exercise there whereby he was able to do that. But under an f.o.b. mill system he, being subject to the pressure from producer B, would put his price at the mill—uniform price.

6129 Q. But I understood you to say that he might at his option charge somebody located elsewhere in his territory a price that would yield a different mill net return than the price he was charging at his mill. Did I so understand you correctly?

A. I did not say he might be able to do it. He might desire to do it, but under the conditions assumed I do not think he would be able to do it.

Q. Why do you say he would not be able to do it?

A. Well, I think the buyers in the area served by A would soon find out about it and there would be quite an uproar, I should think, in that area.

Q. Well, do you mean by your answer that it is only practical considerations that would prevent him from charging different prices, prices that would yield different mill net returns throughout his territory, and not that it would otherwise be impossible or in any way in contravention of economic principles?

A. Well, it would not only be impractical for him to do

it, it would be impossible under certain conditions, as I see it, for him to do it, because under our assumed conditions the two competitors were equal with respect to cost. Now, if he started to charge some people in his own area higher prices, then those people might turn to B. B might push into A's area. That would be a corrective influence that would prevent him from doing that.

6130 Q. Well, would you say that you consider the chief reason why he would not charge such different prices in different parts of his area would be his fear of what B might do to him?

A. I should think that would be the principal deterrent, although the other I mentioned would certainly be of some significance.

Q. Well, if he did charge prices in different parts of his area that yielded him different mill net prices, you would consider that discrimination; would you not?

A. Yes.

Q. And I think you have already said that discrimination cannot exist in a competitive market?

A. Yes.

Q. And, therefore, if A did so sell his product in his territory you would say that the market at A was not a competitive market? I mean—when I say "at A," I mean at A's point of production.

A. Well, if he attempted to do that, as I pointed out, I think he probably would not succeed because he would be inviting—

Q. I did not ask you that. I asked you to assume that he was doing it, and you told me that that, in your opinion, would be discrimination. You have told me that discrimination cannot be practiced in a competitive market, so we have the fact that discrimination is being practiced by

6131 A under the assumed conditions, and now I ask you whether, therefore, you would say that the market at A's point of production was not a competitive market.

A. Well, you are assuming that he could do it and could continue to do it. I question that.

Q. I asked you—it is possible for him to do it, isn't it, unlikely as you may consider it? You can assume that, can you not?

A. He is—

Trial Examiner Norwood: Make your answer based on the assumption there contained in the question, whether or not you think it could probably exist.

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A. Well, as I pointed out, I am trying to explain. I don't believe he could do it and persist in it. He might like to or try to, but he probably wouldn't succeed in it.

Trial Examiner Norwood: Read the question.

A. Now,—

Trial Examiner Norwood: Wait just one minute.

(Question read.)

Mr. MacIntyre: Well, now, I object to the question that is pending in that it assumes a contradiction to the testimony of the witness. If he, however, wants to assume that this is being done without assuming that it is a competitive market, it would not be a contradiction, and, of course, the witness then could answer it.

6132 Trial Examiner Norwood: Owing to the state of the record, I will ask the counsel to repeat that question with the assumption which he wants made in it.

By Mr. Robison:

Q. Assume, Dr. Gray, that in the situation that we have previously assumed regarding A's point of production, B's point of production, and the location O between them; that A sells throughout what you have referred to as his territory at prices so varying as between themselves that they result in varying mill net returns to him at the point A. Now, I ask you, first—and this is by way of repetition—I think you have already indicated that that, in your opinion, would amount to discrimination on the part of A; have you not?

A. Yes. Yes. Under the assumptions.

Q. I think you have also said that discrimination cannot be practiced in a competitive market; did you not?

A. Yes.

Q. Well, then, does it or does it not follow on this assumed state of facts that the market at A's point of production would not be a competitive market, in your opinion?

Trial Examiner Norwood: Answer it.

A. I should say under your assumed statements there, that this market at A is not a—a completely competitive market. You have there a situation which you have assumed where he could discriminate, and if the freight

6133 rates were such that B couldn't come in—that is, if his discriminatory price didn't go high enough so that B couldn't come in, it is conceivable that he might be able to do that. That is an instance of something that is not strictly competitive. We all recognize that situation,

that in a local monopoly where there is just one producer in an anea that that sort of thing might happen; but it is limited, you see, by this outside pressure B. It is a case of —or one of these cases where you don't have complete competition, and you always find that situation where you have one seller lacking—lacking two sellers, you see, which is essential for a purely competitive situation, you have one. The only effective competitive pressure that that man A would be subject to, you see, is this pressure from the outside. Now, you might have situations in there where that pressure from the outside would not reach into this point O. Depends on the freight rates there, you see. We all recognize that situation. It is a very common one.

Q. And under those circumstances is such discrimination in price sanctioned by economic theory?

Mr. MacIntyre: Sanctioned? I object to the use of the term unless there is some meaning given to it, specific meaning, by the counsel.

Trial Examiner Norwood: I think the Doctor can explain that to us.

Overruled.

6134 A. I should respond by saying that economic theory analyzes and describes such situations, explains them, but not sanction, in the ordinary sense of the word.

Q. Well, do you mean by that that economic theory does not undertake to pass judgment on whether or not such a selling policy on the part of A would be blameworthy or not?

A. That is not a function of economic theory.

Q. And, therefore, economic theory would not undertake to pass such judgment; is that right?

A. That is correct.

Q. Let us take some little more concrete facts about A and B. Suppose that A's cost of production at his mill is a dollar per unit; suppose B's cost of production is also a dollar per unit; that the freight rate from A's point of prodURtion to the point O is 25 cents per unit, and that B's freight rate from his point of production to the same point, O, is 75 cents per unit. Now, if A is selling at a uniform mill net price at O, then his delivered price at O would be $1.25; would it not?

A. Yes.

Q. And B could not sell at O for less than $1.75; could he?

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A. That is correct.

Q. Now, what reason can you suggest to us why, under those circumstances, A should not sell at the point O for $1.70 per unit and thereby exclude B from selling there and taking all the business to himself at that higher price?

6135 A. I think your example there, Mr. Robison, simply reduces to figures what we were talking about before, that that states facts. Those costs, those freights, A being closer to point O and having this advantage, could do that. That would be the measure of his local monopoly. Using that in the sense of the—as I explained before, that would be the measure of how far the situation departs from the competitive.

Trial Examiner Norwood: That would operate to move the equalization point away from O, wouldn't it, and towards B?

The Witness: Well, I am not clear what you mean by the term.

Trial Examiner Norwood: The point where the freights are equalized.

By Mr. Robison:

Q. The freights are equalized at a point short of A. As between B's location and 0, freights were equalized, on our assumption, at a point short of O.

A. Yes; O is in A's territory.

Mr. Austin: Your Honor please, I would like to suggest that that last answer, while it was interesting, was not responsive, and I would suggest that the witness listen to the question again and try and answer it this time.

Trial Examiner Norwood: Was that my question?

Mr. Austin: No; Mr. Robison's question. Mr.

6136 Robison asked: "Can you give me some reasons as to why something should or should not be done?" And the witness' reply merely stated "That reduces to figures what we stated before." He didn't give any reasons.

Trial Examiner Norwood: I think that answers it. He may ask him another question.

By Mr. Robison:

Q. Well, I understood your answer, Professor Gray, to be, in effect, that you knew of no reasons why A should not under those circumstances sell at point O at $1.70 per unit.

A. There is no compulsion on him. The only other thing

I suggested previously was his—his general desire not to be charged with discrimination in the local area. Under these assumptions, there would be no economic pressure from the outside that would prevent him from doing that. The pressure of his customers in the area might—might cause him to refrain or to modify it somewhat.

Q. Well, you recognize—

Trial Examiner Norwood: Would selling at $1.70 be ordinary economic behavior?

The Witness: I think I said that it would, where we got this situation of a local monopoly. One seller in the area—his local monopoly is protected by this freight rate structure.

By Mr. Robison:

6137 Q. But would you say that that was not—it was not competitive for him to sell in pursuance to that policy?

A. Well, no, I should say that the policy that we have been outlining here now would be a policy based upon his local monopoly—local monopoly.

Q. Well, now, since A has, under those circumstances, a monopoly in what you refer to as his territory, why should A be at all concerned about the effect of his policy on purchasers?

A. He is under no compulsion, except such compulsion as might be brought by the organized feeling of his customers or buyers. Now, if he is oblivious to that, why, then, he might pay no attention to it, but—

Q. Well, the customers under those circumstances in his territory would have no bargaining power; would they?

A. No, not in the market sense. Pressure power perhaps.

Q. Now, in your conception of a market you expect sellers in a market to follow their own self-interest in their activities in the market; do you not?

A. Yes, absolutely.

Q. And as between different sellers you expect them to be a hundred percent selfish in doing so; don't you?

A. Yes; that is a normal assumption.

Q. In other words, you conceive of a market as a place where as between sellers there is no quarter either
6138 asked or given; is that accurate?

A. No; that is going beyond my conception of it.

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That would imply a sort of ruthless struggle for extermination of the enemy. I think economists have always recognized that competition exists under the rules of the game, what are generally regarded as fair and reasonable. There is no such thing as—

Q. But within those limits of being fair and reasonable you expect a seller, as against his competing sellers, to be entirely self-centered and inconsiderate of them in their interest; do you not?

A. Well, competitive theory would assume that each seller would actively compete for business and for getting his costs down, improving his efficiency, but within the framework of rules and a code of behavior, if I may use that expression, that we had in mind when we used that term "fair competition," fair rules of the game. Economists have always assumed that this process of competition operated within a system of rules which were thought to be fair, give each man a chance.

Q. But within the operation of the rules so conceived you do expect a seller to be a hundred percent selfish in adopting his sales policies; do you not?

A. Yes, within the rules of the game.

Q. Well, now, do you expect a seller also to be selfish as against the buyers in the market and to follow what his—

what he conceives to be his own self-interest in deal-
6139 ing with buyers?

A. Oh, yes, I think that is assumed.

Q. And do you expect that selfishness to exist in the same degree that you expect it to exist in his dealings with other sellers?

A. We have rules of the game governing both, rules among sellers—

Q. No, but I thought we were assuming in all of these questions that both parties were acting within the prescribed rules of the game—

A. Yes.

Q. —and within the limits of such rules do you expect the same degree of selfishness on the part of the sellers to be exercised in their relations to buyers as you expect to be exercised by them in their relations to sellers?

A. I think so.

Q. Well, then, that being the case, if A, whom we have made assumptions about heretofore, considered it to be in his own interest to sell at all points throughout what you

have referred to as his territory at the highest price that he could get at those respective points, which might be on the one side a price just slightly under the delivered price of B and on the other side a price just slightly under the delivered price of some other producer, if he did that he
6140 would be acting in accordance with what was expected of him in the way of following his own self-interest; would he not?

A. Under the conditions of his local advantage which he has, yes.

Q. Referring again to the situation of the same A and B that we referred to before, I think you have said, if I have understood you correctly, that the price of A, at A's point of production, would, in your opinion, be a competitive price because of the pressure with respect to price exerted upon him by B. Am I correct in that?

A. Well, I limited that by saying that we recognize the limitations upon the power of competition which would be exercised by an outside producer against a single producer who has a sort of a local monopoly. It has some effect; it influences but limits, of course—

Q. But still, I asked you whether you would consider that price, A's price, at his point of production a competitive price, and I think you said that you would because of the pressure possibility on the part of B?

A. Well, I thought we assumed that to start out with that he would have prices the same and the price would both be based on the production of A and B. We started with that assumption.

Q. Well, we started with the assumption that costs were the same. I did not expressly ask you to assume that
6141 prices were the same.

A. Well, I thought we assumed that he was selling from those points outward and the cost increasing by the amount of the freight. We got out to the margin. That was our starting assumption.

Q. We did, so far as reference to cost is concerned, but then I asked you whether, in view of the fact that there would be only one seller at A, you would consider the price at A to be a competitive price, and I think you said that you would consider it to be a competitive price under the assumed circumstances.

A. Well, I think I pointed out, though, that it would be competitive within the limitations that we have set up here,

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namely, that he being the only producer, he does have this local advantage in this area, and within that area he has this advantage. That seemed to me to be the way the situation was outlined.

Q. Am I wrong in my recollection in an answer to a similar question that I asked you you said that you would consider the price at A to be a competitive price because of the competitive pressure which would be exerted from B's point of location—or production?

A. I think I limited that, however, by saying "to the extent of the pressure from the outside." I think that that was limited by the extent of this outside pressure. It is not what you would call pure competition. It is a
6142 limited—the competition that you have there is the competition of outside areas, the pressure within those limitations.

Q. Well, you would consider that competition that exists at A, whatever degree it may be, you would consider that price competition; would you?

A. Well, in so far as this—this outside pressure influences his price-making policy there.

Q. Well, if it isn't price competition, what kind of competition would you call it?

A. Well, as I have been trying to say, the situation you have described is one we term as local monopoly. I would not describe it as—this price structure that you outlined here, I would describe it as a structure based on a local monopoly situation.

Q. But yet, with certain qualifications, at least, you have said you consider it a competitive price; that is right; isn't it?

A. It is competitive to the extent that this outside pressure puts limits or a ceiling, you might say, on what this local monopolist could do in the way of price discrimination. That is my point.

Q. Well, what you have said seems to me to come down to this, then: That you can have a price which at the same time is a competitive price and also the result of a local monopoly; is that true?

Mr. MacIntyre: I object to the counsel carrying on an argument with the witness.

Trial Examiner Norwood: Objection overruled. Go ahead.

A. No, I think that would be an incorrect interpretation of what I have said.

By Mr. Robison:

Q. Well, does my pointing what seems to me to be the result of what you have said out to you cause you to change what you have previously said, to the effect that within certain limits you consider the price at A, under the assumed facts, to be a competitive price?

A. Let us put it this way, which I think is a correct statement of my views here: That that—that the prices prevailing in this area would be local monopoly prices limited in their operation by the outside pressure from this adjacent area.

Q. Well, let me ask you again, then, in view of what we now have in mind: Would you say that those prices, A's price, at his point of production, under those assumed facts, was a competitive price or not a competitive price?

A. I don't think I can answer that in terms of the assumptions we have developed here. I think my previous answer would be the way to put it. It is a local monopoly price reflecting his local monopoly advantage but
6144 limited by—circumscribed by this outside pressure.

Q. Well, at any rate, we get to this, then, do we not: That there would be nothing in it which would be inconsistent with the operation of economic principles?

A. No; it is commonly recognized that that situation exists.

Q. At one place in your direct testimony you used the expression "The economic test of a true market." Will you tell me, first, what you mean by a true market?

A. I think my testimony on that point is rather full and complete.

Q. It has been rather lengthy. Perhaps you could summarize it for me so that I can see it.

A. Well, very briefly, I took the position that a true market was a competitive market, one that was in competition or was active, where you had several sellers and several buyers and where the demand and supply sources were operating freely, no restrictive or restraining influences. I started, I think, with that—that assumption.

Q. Well, based on what you have told me earlier, it is true, is it not, that your conception of a true market does not involve as an element of it the existence of perfect—what you call perfect competition?

A. Well, that statement that I just made would assume a state of competition that, for practical purposes, we

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could agree to be perfect. Of course, we never get
6145 perfection, we know, but it would give you really effective competition in a practical sense. Then from that point you could introduce a great number of imperfections which would limit, and the more of those that were introduced, of course, the farther away you would get from this basic concept.

Q. Well, is it accurate to say that your conception of a true market may include what you have referred to as imperfect competition?

A. That gets back to the thing we discussed much this morning about this question of degree, and where one is going to draw a line—

Q. My question hasn't had reference to any element of degree, you will notice.

A. Well, I can't answer it in any other terms except—

Q. Well, I ask you whether your conception of a true market might include the element of imperfect competition, of what you called imperfect competition?

Mr. MacIntyre: Now, I object to that unless it is pointed out to what place that he had used the term "imperfect competition" this morning, because there it was used in different places, specifying different degrees and in different meanings.

Trial Examiner Norwood: Objection overruled.

Go ahead.

The Witness: May I have the question read,
6146 please, sir?

Trial Examiner Norwood: Read it.

(Question read.)

A. I should answer that my conception of a true market would not be an absolute one, in the sense that it would presuppose a complete absence of all elements of interference with the competitive process. It would still be an effective market even though there were certain imperfections in it, but—and those imperfections may become so numerous and in their effect become such as to interfere with the effective operation of the market. Then at that point I would say that the imperfections might become so serious that you no longer had effective competition.

By Mr. Robison:

Q. Well, I think that, in substance, answers my question.

Trial Examiner Norwood: Off the record now.
(Discussion off the record.)
Trial Examiner Norwood: Proceed.

By Mr. Robison:

Q. In your opinion as an economist, Dr. Gray, if a uniform mill plan of pricing is in use, may or may not the condition of imperfect competition exist?

A. I am not quite clear what you mean by the first expression, the uniform mill price, did you say?

Trial Examiner Norwood: Plan. Plan.

6147 Q. The term I used was—

A. Plan.

Q. —a uniform mill plan of pricing, meaning by that the use of a uniform price f.o.b. the producer's mill.

A. Yes.

Now, read the question in the light of that—

Trial Examiner Norwood: Read it; yes.

A. —later expression.

(Question, as amended, read.)

A. One might have such a system and still have a great variety of imperfections. I make no claim that such a system of f.o.b. mill pricing would eliminate all the elements of imperfection.

By Mr. Robison:

Q. In connection with your reference in certain connections to the dispersing of markets, I would like to have you tell me whether, in your opinion, such practices in industry as mass production and national advertising tend to disrupt markets, as you conceive them?

A. May I answer those one at a time? I think that mass production doesn't necessarily result in the elimination of competition. It may develop a situation such as we were discussing a moment ago, where you have a very large producer serving a large area, and he might be the only producer in that area. There you would have this situation I have described as a local monopoly,
6148 which we were just discussing. So I think it is true to say that in the mass production industries you would tend to have that situation. Now, on national—

Q. Now, if I may interrupt at that point, do you mean, responding to my question, that there is a tendency, then, on the part of mass production to disrupt markets as you conceive them?

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A. I think that has been the observed tendency.

Q. Now, will you answer the question with reference to national advertising?

A. Well, I think there the situation is—maybe a little bit—little different. National advertising might be tied up with some scheme of administered prices. That doesn't necessarily follow, but it might be. It is not the same fundamental physical situation that you have in this mass production case, the first part of your question. It comes more to a question of economic policy of what men acting according to a plan can do by national advertising. I should put the two things on a different footing so far as fundamental, physical elements are concerned.

Q. Well, coming back to the question, then, what do you say as to whether, in your opinion, the following of the practice of national advertising tends to disrupt markets as you conceive them?

A. I think the answer is "yes," it is a very
6149 important factor.

Trial Examiner Norwood: I think we will have a five minutes' recess right here.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: Before we go on the record—

(Discussion off the record.)

Trial Examiner Norwood: Proceed.

By Mr. Robison:

Q. Mr. Gray, in this situation that we have assumed about A's location and B's location and the point O in A's territory, would it not increase competition at O if B were to sell at O for something less than his price at his place of manufacture plus the freight to O?

A. No. I couldn't see that that would be an increase of competition. It would be a—a freight absorption method, because under our assumptions there he is at a disadvantage. It cost him $1.75 to get into that point,—

Q. Yes.

A. —that is, a dollar plus the 75 freight. Now, if he made—he would have to make a pretty serious concession there in order to get into O, under our assumptions.

Q. Now, we have assumed at one time in that connection that A was selling at O at $1.70.

A. Yes, just under B's price.

6150 Q. Just under B's price.

A. Yes, sir.

Q. Now, if B were to quote and sell at O at $1.65 and, of course, absorb freight in order to make such sales—

A. Yes.

Q. —would that not increase competition at O?

A. It would—it would better the position of the buyers at O, under our assumption that the price has now been reduced, and under our assumptions, in order to let B get in there, but my analysis of these adjacent market areas indicated that B couldn't do that without raising his prices in his own area sufficiently to recoup this—this freight absorption into point O. Now—

Q. Well, suppose in B's price at his point of production he has a margin over production cost of 12 cents.

A. That is, his cost is lower than A's, is that—

Q. No; his cost is the same as A's. We have been assuming that his cost of production is the same as A's, but that in his price at his place of production he has a margin of profit over his production cost of 12 cents, and in order to sell at O at $1.65 he absorbs freight to the extent of 10 cents. It would be quite possible for him to do so; would it not?

A. I don't see how he could do that very long. It seems to me his profit there would—would be pretty seriously affected unless he could, as I say, increase his
6151 prices in his own local territory so as to recoup that.

Q. Well, he would not be losing any money, at any rate, under those circumstances, in selling at $1.65 at O; would he?

A. Well, he would be cutting in on his profit, though.

Q. That is true, but he would not be losing any money; would he?

A. Well, going back to my assumption about the profit, that would tend to conform to the basic necessary return on his capital. Now, if he began to sacrifice that in order to get into the other fellow's territory, it would seem to me that it would hurt him.

Q. Well, he—you said, as I understood you, that the element of return on capital investment was not necessary in a price in order to invite the investment of capital in an industry?

A. Yes, and I thought we had—

Q. Thus far that is right; is it not?

A. Yes.

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Q. Well, now, we are assuming there, are we not, that B has his capital invested in his plant, considered it as an existing plant?

A. Yes, and the return on that capital I have been considering as a cost, which is a part of this $1 cost of production price.

Q. Yes, but if A is getting—call it what you will,—
6152 return on capital or profits, of 10 cents—rather, 12 cents in his so-called cost of a dollar, it would be optional with him, would it not, to devote some part of that 12 cents to absorption of freight in order to sell at the point B where A is selling at $1.70?

Mr. MacIntyre: Now, just a moment.

Mr. Robison: Excuse me. I want to correct that. May I?

Trial Examiner Norwood: Yes.

By Mr. Robison:

Q. At the point O.

Trial Examiner Norwood: Point O.

Mr. Robison: Just correct it physically, please.

6153 A. Well, he could—he could elect that option if he cared to cut into—on his profit margin and was willing to take a less profit and to ship into the other fellow's territory, but he couldn't do that for any length of time under the assumptions of a generally competitive system
6154 and where you had active competition as between these two adjacent areas.

Q. Is it beyond your conception as an economist, Dr. Gray, that a producer of goods should at times sell them for—at a price which yields him less than his cost of production? In other words, sells at a loss?

A. We had those situations where temporarily that may be the case. But over a long period—and we usually come back to the long run—that couldn't—couldn't continue. He just couldn't continue to sell at a loss.

Q. The length of time it could continue would depend on the amount of resources that the seller had and was willing to devote to the continuance of the business; would it not?

A. Yes; he might hang on for a while but not for long.

Q. Well, how can you say "not for long" when you have no information as to the extent of his resources or the extent he is willing—perhaps for sentimental reasons—

to devote those resources to the prosecution of his business?

Mr. MacIntyre: I object to that question as being utterly immaterial and irrelevant and argumentative.

Trial Examiner Norwood: Objection overruled.

The Witness: Read it again.

Trial Examiner Norwood: Read it.

(Question read.)

A. Well, I can answer by saying it is only a term of general theory. It does not apply to particular facts or a
6155 particular situation. That is a general theoretical principle.

By Mr. Robison:

Q. It is a part of that general economic theory that a manufacturer customarily has substantially all of his resources invested in his manufacturing project?

A. Well, I do not think it would be safe to say that theory would make any assumptions about a particular situation like that.

Q. But you have made such an assumption, have you not, in expressing the view that selling at a loss could not continue except for a short time?

A. Well, that is a general proposition, that—

Q. No. I asked you whether you made such an assumption in making the answer.

A. Well, we of course, have to assume—

Trial Examiner Norwood: Well, did you? The question is, did you make such an assumption in your previous answer?

The Witness: Well, having assumed that no resources—

Trial Examiner Norwood: Did you?

The Witness: Yes. I assumed—

Trial Examiner Norwood: Well, that answers it.

By Mr. Robison:

Q. Now, in expressing the view that you have expressed about B's ability to sell at O, have you taken into ac-
6156 count the possibility of reduced costs resulting to B through increasing his volume of production by selling at O?

A. I think I answered that this morning. In one question involving that point it was raised. I did consider that matter. I think my answer is in the record of this morning.

Q. Well, I don't think that you answered it, at any rate,

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with reference to the assumed facts concerning A and B and O. But whether you have or not, I will ask you whether in expressing the views that you have expressed concerning the ability of B to sell at O, a point in A's territory, you took into consideration the possibility that B might have reduced costs of production by reason of the increase in his volume of production resulting from his selling at O?

A. Looking at it from the point of view of B alone, the party who is involved here, he might increase his production by the amount of the business that he took away from A.

Q. Well, now, that is all I asked you about. My question had no reference to national economy.

Mr. Gilpatric: Will you read the answer, please?

(Answer read.)

By Mr. Robison:

Q. And might not that increase in production result in saving in cost which might offset or more than offset the freight absorption which he would have to make in order to sell at O?

A. Well, that is conceivable, but how the situation
6157 would develop in any given state of facts I could not answer without knowing those facts.

Q. But when you express the opinion that on the assumed state of facts B could not sell at the point O, you did not take into consideration that possibility of reduction in cost for B resulting from his selling at O, did you?

A. No. We were assuming there that these costs were fixed at $1. That is what we started out with.

Q. Yes.

Would your views regarding the possibility of B selling at O be changed in any respect if there was included in the assumptions the possibility that B's cost might be reduced by his selling at a point in A's territory, which we have indicated as O?

A. Well, there would have to be some further assumptions there, too, and assume his costs would decrease. I think you would also have to assume he charged the people nearest his point of production the highest price he could get without A coming in on him, shipping in to him, and with those two things together—all these things would have to be ironed out in this assumption, I think, before you could give a direct answer.

Q. Yes, but all those things would be within the range of economic possibilities, would they not?

A. Up, as I have said time and again,—up to the
6158 limit of what A is doing over here on the other side; that is, what competitive pressure he might bring to bear on B.

Q. We were speaking before the last short recess of the matter of national advertising.

Do you consider that either the employment of salesmen in the sale of the products of an industry or advertising of the products of an industry,—that either one of them is economically burdensome to the public?

6159 A. I made no such assumption, and I think I made no such testimony.

By Mr. Robison:

Q. Well, is your answer, then, that you do not consider them economically burdensome?

A. That depends upon the circumstances, and the circumstances are not before us.

Q. Well—

A. And I made no such assumption.

Q. Do you consider them to be not necessarily burdensome to the public?

Mr. MacIntyre: I object to that question.

Trial Examiner Norwood: Objection overruled.

Let him answer.

A. It might be necessarily burdensome. I made
6160 no such statement; I made no such testimony, I think. I think my testimony was directed to a certain question relating to a delivered price situation.

By Mr. Robison:

Q. I am going to ask you now, Dr. Gray, to assume another state of facts.

Assume, please, that a manufacturer of rigid steel conduit has his only plant for the production of conduit at Pittsburgh, Pa.; that he maintains in a warehouse in New York City a stock of conduit which is shipped to the warehouse from his plant in Pittsburgh.

Assume further that he publishes a price for each type and size of conduit f.o.b. his plant at Pittsburgh and a price for the same type and size of conduit for delivery from his warehouse in New York City, which is equivalent to his published price f.o.b. Pittsburgh plus railroad freight from Pittsburgh to New York City.

Now, when that manufacturer sells conduit for delivery

to the purchaser's truck at his warehouse in New York City and charges his published price for it there, do you consider that that manufacturer in so selling out of warehouse is selling one commodity or two?

A. The commodity in question is conduit. It has been shipped part of its way to the market. I should say that the manufacturer is selling conduit, and his expense of
6161 hauling the goods from Pittsburgh to New York is a freight charge, and, in line with my previous testimony, I should distinguish between the cost of producing the conduit and the cost of shipping it to New York, which is your distributing center there.

Q. I do not think you have answered my question. Your answer seems to indicate that to your mind elements of cost are determinative as to whether a seller is selling one commodity or two.

A. No.

Q. Did you mean to be so understood?

A. No. I distinguished between the two functions, the function of producing the goods and the quite separate function of hauling or transporting those goods.

Q. Now, will you answer my question as to whether under those assumed circumstances you would consider that this manufacturer in so selling out of warehouse was selling one commodity or two commodities?

A. I consider he is selling one commodity, conduit.

Trial Examiner Norwood: Is that all that he is selling?

The Witness: Yes; he is selling conduit.

Trial Examiner Norwood: Is he selling anything else at the same time?

The Witness: Well, if he quotes a delivered price,
6162 which I assume he is doing here, it is what I described yesterday as a combination price; it includes two items.

Trial Examiner Norwood: He is selling a commodity and a service; is that right?

The Witness: A service in hauling the goods from Pittsburgh to New York.

Trial Examiner Norwood: All right.

By Mr. Robison:

Q. But in terms as used by economists, services come within the general designation of commodities, do they not?

A. Why, we make a distinction in speaking of goods and

services. We distinguish between the physical and the intangible things.

Q. Well, do you mean by that that economists in general do not treat the selling of services as amounting to the selling of commodities?

A. Oh, no, I do not mean that at all. They distinguish between the two in their discussions.

I think the important point here is my distinction between the two functions, the function of production and the function of transportation.

Q. Well, you understood from the facts that I asked you to assume that the price out of warehouse in New York was a price out of warehouse, didn't you?

A. No, I did not so understand,—the first part of
6163 your statement.

Q. That was a part of what I asked you to assume, that this manufacturer not only published a price f.o.b. his plant at Pittsburgh but he also published a price for delivery out of his warehouse in New York, and that the price out of warehouse in New York was the equivalent of his f.o.b. price at Pittsburgh plus railroad freight from Pittsburgh to New York.

Now, having that element of the facts in mind, what do you say as to whether, in your opinion, under those circumstances this manufacturer in so selling out of warehouse would be selling one commodity or two commodities?

A. He is still selling one commodity, namely, conduit. But the distinction we are drawing there is that that commodity having incurred these costs of transporting from Pittsburgh to New York has now that added cost element in it. So his f.o.b. warehouse price, as you stated, in New York would be the f.o.b. Pittsburgh price plus the freight. He is still selling conduit, but due to the fact that a large outlay has been made for the hauling of that conduit, the conduit now is a more costly product than it was back in Pittsburgh.

Q. In other words, from an economic point of view it is in some respects a different commodity from the commodity that he sells out of his mill at Pittsburgh; is that right?

A. Well, as we might say in technical language, place utility has been added to it.

6164 Q. As an economist, are you familiar with the term "freightless price"?

A. Yes, sir.

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Q. Can you tell us where you first came across the term "freightless price"?

A. No, sir; I can't. I began studying economics 20 years ago. I couldn't recall where I first came across that.

Q. Do you know who is the author of the term "freightless price"?

A. I couldn't answer that.

Q. Well, now, under this state of facts that I have asked you to assume about this Pittsburgh manufacturer of conduit selling out of his warehouse in New York, would you say that his warehouse price at New York was a freightless price or not?

A. Yes, I should say it is. We have already included the freight in there, the cost of getting the goods to New York, so from that point there would be no further freight.

Q. Well, now, I will ask you to assume that that same manufacturer on receiving an order for a carload quantity of conduit from a purchaser in New York City, instead of making delivery to the purchaser's trucks out of the New York warehouse, ships the conduit specified in the order by rail from Pittsburgh, consigned to the purchaser, and pre-
pays the freight, and charges for it the same price
6165 that he would have charged if he had delivered it to
the purchaser at his warehouse, namely, at his published New York warehouse price.

Under that state of facts, would you say that the price charged by the manufacturer for the conduit delivered by rail at New York would be a freightless price or not?

A. I should say his price there is the Pittsburgh price plus this freight, and those two things taken together are the basis for his quotation to this buyer in New York, and there you have got this necessary function of transportation. Whereas in the previous example you have used that had already been taken care of and added to the value of the goods in New York.

Q. Now, you have stated in the latter case, the delivery out of warehouse, you would not consider the price a freightless price. Now, I ask you whether in the other case, where the price is the same at New York in dollars and cents, you would consider that a freightless price or not?

Mr. MacIntyre: Now, may we have that straightened out as to what this other situation is that this last portion of his last question refers to? It seems to me we are awfully far from what it refers to in the first instance.

Trial Examiner Norwood: Answer the question.

A. As I understand your proposition, the two would come to the same thing. It is the same basic price, the same cost, but the only difference is that in the one
6166 that cost has already been incurred. The selling of the conduit in New York, which is made up of the cost of production in Pittsburgh plus what it cost to haul the goods to New York, that is the price of conduit in that first situation. The other, he would quote a Pittsburgh price plus the freight.

Now, if it is the same party in New York—

By Mr. Robison:

Q. Yes.

A. —it would come to the same thing. It is a matter of terminology there where you are basing the price. In the first one you based it at the New York warehouse; the second, at Pittsburgh. It comes to the same thing if the cost of conduit in Pittsburgh is the same and the cost of transportation is the same.

Q. Well, do you mean by that that you would not apply the term "freightless price" to either of those prices that I have referred to?

A. Well, it would be better perhaps not to and to stick to the more strict usage, where there is no element of freight at any time; that is, the goods go to the producer's place and the consumer takes it away. I think, using that first example you gave, if you are considering the price of conduit at New York, you include not only the cost of making it but the cost of laying it down there. It has no freight beyond New York in the sense that there is no more
6167 freight added; the consumer comes and get it.

Q. Of course, in one case I have assumed the consumer sends his truck to the manufacturer's warehouse in New York, and in the other case he sends his truck presumably to the freight car standing on a railroad siding, and there is no difference in the price that the purchaser is to pay for the conduit. Do you see then in those two situations any reason for considering one a freightless price and the other one not a freightless price?

A. No, I do not see any reason for—except as you shift your point of view there, the two cases of freights there, the cost—

Q. Well, now, in the case under those circumstances of the conduit shipped by railroad, consigned to the purchaser

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at New York, do you consider that the manufacturer would be selling to that purchaser one commodity or two?

A. He is still selling conduit.

Q. And the conduit, as you use the term there, means one commodity, does it?

A. One commodity at the point of production with freight added. I think you must make that distinction between the two, the two entirely different functions.

Q. Well, still I can't understand what your answer to my question is, Dr. Gray. I assume you are trying to answer it but I still do not understand whether you would
6168 say that in so delivering that carload of conduit by railroad at New York the manufacturer was selling to the purchaser at New York one commodity or two.

A. Well, if he quotes a delivered—I testified yesterday if he quotes a delivered price then he is really quoting a combination of two things. If he quotes an f.o.b. price—

Q. No. I told you what the price was—

Trial Examiner Norwood: Yes.

Q. —for delivery at New York; namely, the same as the price which he would sell at under the assumed state of facts out of the New York warehouse.

Now, that necessarily is a delivered price, is it not?

A. I should say he is selling two things in this latter situation here, the conduit plus the cost of hauling. In the other case you already had—

Trial Examiner Norwood: Well, is he selling one commodity or two?

The Witness: Well, he is still selling one commodity.

Trial Examiner Norwood: Yes. The same situation as when he sold from the warehouse?

The Witness: Well, I understand he sold from the warehouse.

Trial Examiner Norwood: Yes.

6169 The Witness: Well, that—

Trial Examiner Norwood: Does that change the situation at all, selling from the warehouse or selling f.o.b.—

The Witness: Yes, it does.

Trial Examiner Norwood: —point of delivery?

The Witness: Yes.

By Mr. Robison:

Q. Now, under those same assumed facts, namely, that the manufacturer that we have referred to is selling for

shipment to New York by rail, consigned to the purchaser; and assume further that, instead of selling under those circumstances at the same price which he would charge out of his New York warehouse, he added something by way of profit on the cost of transportation from Pittsburgh to New York.

Would you say that in doing so he was violating any of the principles of economy theory?

A. I should think he would be. He is getting the profit there on a function that is performed by some entirely different agency, namely, the railroad.

Q. Well, now, of course, you understand that in my assumptions I am assuming that he can get that price in New York; don't you?

A. Yes. Of course, he could not under a competitive situation.

Q. Well, whatever the situation may be, I am ask-
6170 ing you to assume that he can get that price, and does get it in New York.

Now, from that state of facts, and considering that state of facts only, would you say that in charging a price which included a profit on his cost of transportation to New York he was violating any principle of economics?

A. I should say he is acting monopolistically there. He is certainly not acting competitively.

Q. Well, when you say he is acting monopolistically, you are using a term that I find I do not understand, although perhaps I once thought I did, and therefore I will ask you whether you used the term "monopolistically" in any sort of a reprehensible sense.

A. Oh, no. I was using it strictly in an economic sense.

Q. Yes.

How do you define "discrimination in price" when the term is used in an economic sense?

A. We think of discrimination as a departure from the uniform competitive price. That is the simplest possible definition. Starting with the uniform competitive price as the standard of measurement there, a departure from that price would be regarded as discriminatory and indicate some power on the part of the seller that makes it possible for him to thus depart from the competitive rule which would require a uniform price.

6171 Q. Such a power on the part of the seller you have referred to might result merely from his location, might it not?

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A. That was the situation we discussed a while ago.

Q. Regarding A and B and O.

A. Yes.

Q. Suppose that a manufacturer of a commodity sells that commodity in the same market to wholesalers at one price and to dealers or retailers at a somewhat higher price. Would that be discrimination in price, as you use the term in economics?

A. Not if those differences were measured by the differences in the cost of serving those different classes of customers.

Q. Suppose it cost just as much for the seller to deliver his commodity from his plant to the wholesaler,—just as much per unit, I mean,—as it did to deliver it to the retailer, and yet in the same market he charged the wholesaler a somewhat lower price than he charged the retailer. Would that be discrimination, as you use the term as an economist?

A. If it could not be substantiated on some difference in cost in the two situations. If the cost factor is the same, and you have a competitive market, you would have the uniform market price at that point. Now, whether these buyers are wholesalers or retailers, or any other kind of people, they all buy at that uniform price. So my
6172 answer to the question is that you would have to explain that situation on some cost basis; otherwise, it would seem to me to be discriminatory.

Q. Well, then, is it correct to say that in your opinion as an economist any distinction in the price of the same commodity as between different buyers in the same market is discrimination?

Mr. MacIntyre: May we have that question re-read?

Trial Examiner Norwood: Read it.

(Question read.)

A. Unless justified by differences in costs; yes.

By Mr. Robison:

Q. And it follows, then, as I understand you, that, with reference to the question as to whether there is discrimination in such a distinction in price, is a matter of no moment, whether or not that distinction in price is in any way prejudicial to either of the sellers?

A. Well, that raises another question, as to how a set practice would affect the interests of the seller parties.

Q. As I understand you, that does not need to be taken into consideration in order that you may determine whether a distinction in price amounts to discrimination or not?

A. No. I think you can cite the first question and then go on to the second question, the consequences or the effects.

Q. I will ask you to assume still a different state of facts.

6173 Assume, please, that in an industry producing a product, which I shall call product X, there are ten manufacturers;

Assume further that product X is a homogeneous commodity in the sense that the product of one of the manufacturers will serve all the purposes of the product of any of the others and purchasers will not pay any higher price for the product of any one than for the product of any of the others;

Assume that the plant of manufacturer A for the production of the product is located at point M and the plant of manufacturer B is located at point N; that N is distant approximately 200 miles from M and that the plants of all other manufacturers in the industry are located more than 500 miles west of both M and N;

Assume further that all manufacturers in the industry, except manufacturer B, have been and are publishing and quoting prices for the product X f.o.b. their respective manufacturing plants, but that manufacturer B, in the exercise of his independent judgment, and without communication of any kind with any other manufacturer or seller of the product X, has decided to and does adopt and pursue the policy of selling product X produced by him only at delivered prices.

Now, I ask you, first, whether on that assumed state of facts, in your opinion, manufacturer B, in adopting

6174 and pursuing that price policy for his product, has violated any rule or principle of economics.

Mr. MacIntyre: I object to the question. It is so incomplete that I do not see how it could be answered.

Trial Examiner Norwood: Well, he is not asking you to answer it. (Laughter.)

The witness can say if the hypothesis is incomplete. I think that is one of the tests he is given here as an economist.

Mr. MacIntyre: All right.

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The Witness: But, Mr. Examiner, that is a very involved and difficult thing there. It is impossible to answer that. I could not do it justice from a mere reading of it.

Trial Examiner Norwood: I think that the counsel should furnish that in writing to the counsel for the Commission also.

Mr. Robison: I have it in writing, and I will be glad to give you an opportunity to read it. I have my entire question with the assumptions included in what I am showing you here (handing a paper to the witness).

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Now, the counsel is willing for the answer to be
6175 deferred until tomorrow morning, and I will ask the counsel—

Mr. Robison: May it be understood for purposes of reference that hereafter I will refer to the assumptions that have now been put on the record as assumption B.

Trial Examiner Norwood: Yes; assumption B.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Proceed.

By Mr. Robison:

Q. In your direct examination this morning, Dr. Gray, you were asked about the term "administered price." Do you recall that?

A. Yes.

Q. Just that I may attempt to make more clear than it is to me now what is your conception of the term "administered price," would you say that the price that the Ford Motor Company charges for any one model of its production of automobiles in any one season is an administered price?

A. In part, yes. It is one of those examples where the structure of price system is differentiated between models, size of engines, and so on. They set up a scale of differentiations there in the product; then they maintain that system. They set up a price system according to different models, and types, and sizes, and so on. That is an example of one form of administered price, where you
6176 have this differentiation of product. That is one form of administered price. There are various forms of it.

Q. Yes.

Now, with reference to that apparent insistence on differentiation in product, suppose it were a matter of a price which were being fixed by the holder of a patent on just one product. Would you call that an administered price?

A. Well, one might perhaps speak of that as an administered price. He sets a price and that is all there is to it. There is just one commodity and one price, and there it is. It is, I should think, a very elementary example in this case, that it is a simple type, where there is just one thing to do and that is fix the price, and there it is.

Trial Examiner Norwood: Well, is it a monopolistic price?

The Witness: Well, I assume it would be if that man had a patent.

By Mr. Robison:

Q. That is, in the case of the patentee, you would call it a monopolistic price?

A. Yes.

Q. Now, in the case of the Ford Motor Company price on any one of its models, would you call that a monopolistic price?

A. No, not in the same sense. It is one of those cases where you have some limitation on the competition,
6177 something less than—something that departs from the perfect type of competition.

Q. You mean by that that it is monopolistic only in that limited and economic sense?

A. Well, no, I did not mean to say that. I meant it was an example of something less than perfect competition in that phase. Now, there are other factors there, of course, that need be considered in that situation. For instance, you have the other manufacturers, and each one calculates what the other is likely to do. You get into the whole process of analysis. It is a question of degree. There is still a considerable element of competition there, but it is not the competitive type in the strict sense of the word.

Q. Well, then, is it correct to say that the price to which you might apply the term "administered price" is not necessarily a price which has not been arrived at by free and unrestricted competition?

A. No. I should say that, as I said this morning, an administered price, it seems to me, must necessarily be

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something different from a competitive price, because in competition nobody administers anything.

Q. Well, I think again, Dr. Gray, it seems to me we are just quibbling over terms in my question and your answer. You talk about a competitive price, apparently using it in a technical economic sense, and my question had ref-
6178 erence to a price which in the fixing of it was not influenced by anything other than free and unrestricted competition.

A. Now, if it were free and unrestricted competition, I would not term it an administered price. But there is the difficulty, you see, in drawing these distinctions when you have to differentiate the meaning of terms. I am not trying to quibble about terms, but—

Q. Yes. I came to the realization a moment ago, Dr. Gray, that you and I in all respects do not speak the same language, and therefore I find difficulty in expressing myself.

A. Let me—

The Witness: This is off the record. I think I can explain it.

Trial Examiner Norwood: Well, do you want it?

Mr. Robison: I am perfectly willing if he wants to say something off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back to the record.

By Mr. Robison:

Q. Again, in your testimony this morning, Dr. Gray, you expressed the view that f.o.b. mill prices would cut out the wastage of the cost of transportation and thereby reduce cost of production. Do you recall making that statement?

A. I was referring there, I think, to the wastage
6179 in the sense that it is unnecessary cross-hauling.

Q. It was in that connection, as I recall it, that you used that expression.

A. Yes.

Q. Well, I understand from that answer that under some circumstances at least you include cost of transportation of a finished product in the term "cost of production." Is that correct?

A. No. I think I defined "cost" as a cost at the point

of manufacture, including only that freight on the assemblage of the materials necessary at the point of manufacture.

Q. You are correct, I think, in that you did so state in your testimony.

Now, I am trying to find out, and I would like to have you tell me, how you reconcile that conception of cost of production with your statement that the saving of wastage resulting from cross-hauling would reduce the cost of production.

A. I think I can explain that. He had in mind there a system of mutual dumping. You had each party invading the natural territory of another. Now, as I pointed out, under a competitive system that would be not only impossible because you meet competitive opposition if you try to do it, but it would be unnecessary. Now, when all parties are doing that you get that element of unnecessary
6180 freight. That is what I meant by a wastage. It was a hauling of goods which was not fundamentally necessary in order to get the goods produced and distributed. It is a cost that somebody has to pay. That is my point. If that element of waste could be eliminated, it seems to me it would pave the way for a lowering of the costs and a reduction of price and an expansion of the volume by means of lowing the price. That is my theory of it.

Q. Well, when you, as I think you did, in your direct testimony referred to this saving in transportation cost as resulting in a reduction in the cost of production, you really meant in the cost of producing the goods and laying them down at the places of delivery of the seller, did you not?

A. Yes. I was referring to the over-all costs of providing what we need in the way of rigid steel conduit, or any other product. It is a general use of the word "cost."

Mr. Robison: I think this is about the time you thought we were going to adjourn.

Trial Examiner Norwood: Ten o'clock tomorrow morning.

We will meet down here, I have just been informed.

(Whereupon, at 4 o'clock p.m., March 11, 1942, the hearing in the above-entitled matter was adjourned.)

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UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume IV of the Printed Record, being one of 5 volumes of said Printed Record filed on May 13, 1947, in:

Cause No. 8642.

Clayton Mark & Co., *et al.*,
Petitioners,

vs.

Federal Trade Commission,
Respondent,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 20th day of October, A. D. 1948.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*